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No. 661

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

THE STATE OF MISSISSIPPI, et al ..... Petitioners

vs.

JAMES HOWARD MEREDITH, etc. ..... Respondent

(UNITED STATES OF AMERICA, Amicus Curiae)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

THE STATE OF MISSISSIPPI, et al — Petitioner

vs.

JAMES HOWARD MEREDITH, etc. — Respondent

(UNITED STATES OF AMERICA, Amicus Curiae)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The State of Mississippi; Ross R. Barnett, Governor of the State of Mississippi; Joe T. Patterson, Attorney General of the State of Mississippi; T. B. Birdsong, Commissioner of Public Safety of the State of Mississippi; Paul G. Alexander, County Attorney of Hinds County, and William R. Lamb, District Attorney of Lafayette County; J. Robert Gilfoy, Sheriff of Hinds County, and J. W. Ford, Sheriff of Lafayette County; William D. Rayfield, Chief of Police of the City of Jackson, James D. Jones, Chief of Police of the City of Oxford, and Walton Smith, Constable of the City of Oxford, hereinafter referred to as "Petitioners", pray that a Writ of Certiorari issue to review the judgments and orders of the U. S. Court of Appeals for the Fifth Circuit hereinafter set out in Section B-1 of this Petition.

A.

OPINIONS BELOW

No opinions were delivered in the Court of Appeals in connection with the orders and other procedures requested to be reviewed by this Petition. A Petition for a Writ of Certiorari to said Court was previously filed and docketed in this Supreme Court as Cause No. 347, October Term, 1962, seeking a review of the final decision and other matters in the case of *Meredith v. Fair, et al.* This Petition was denied by this Court on October 8, 1962. The present Petition does not cover any matters presented to this Court in the former Petition for Certiorari.

B.

JURISDICTIONAL GROUNDS

1. The sixteen Judgments and Orders of the United States Court of Appeals for the Fifth Circuit sought to be reviewed were dated and entered as set out below:

(a) Order designating the United States as Amicus Curiae.

Dated and Entered: September 18, 1962. (A. 18)

(b) Order enjoining Appellees from:

(1) Enforcing Senate Bill No. 1501, enacted September 20, 1962, against Appellant, Meredith;

(2) Taking any steps to effectuate the misdemeanor conviction of Appellant of September 20, 1962; and

(3) Complying with a State Court Injunction issued September 19, 1962 by the Chancery Court of Jones County, Mississippi.
Dated and Entered: September 20, 1962. (A. 19)

(c) Show Cause Order in Civil Contempt directed to all members of Board of Trustees on application of Amicus Curiae.
Dated and Entered: September 21, 1962. (A. 21)

(d) Show Cause Order in Civil Contempt directed to all Appellees on application of Appellant.
Dated and Entered: September 22, 1962. (A. 23)

(e) Order requiring Trustees to take enumerated actions.
Dated and Entered: September 24, 1962. (A. 24)

(f) Temporary Restraining Order directed to the State of Mississippi, Governor Barnett and others on application of Amicus Curiae.
Dated and Entered: September 25, 1962. (A. 26)

(g) Order adding Governor Barnett as new party defendant.
Dated and Entered: September 25, 1962. (A. 30)

(h) Temporary Restraining Order directed to Governor Barnett and others on application of Appellant.
Dated and Entered: September 25, 1962. (A. 31)

(i) Show Cause Order in Civil Contempt directed to Governor Barnett on application of Amicus Curiae.

Dated and Entered: September 25, 1962. (A. 33)

(j) Show Cause Order in Civil Contempt directed to Governor Barnett on application of Appellant.

Dated and Entered: September 26, 1962. (A. 35)

(k) Show Cause Order in Civil Contempt directed to Lt. Governor Johnson on application of Amicus Curiae.

Dated and Entered: September 26, 1962. (A. 36)

(l) Judgment of Civil Contempt against Governor Barnett.

Dated and Entered: September 28, 1962. (A. 38)

(m) Judgment of Civil Contempt against Lt. Governor Johnson.

Dated and Entered: September 29, 1962. (A. 41)

(n) Order dismissing contempt citation as to Appellants.

Dated and Entered: October 2, 1962. (A. 45)

(o) Order continuing hearing on Motion for Temporary Injunction.

Dated and Entered: October 2, 1962. (A. 46)

(p) Judgment and Order granting Preliminary Injunction.

Dated and Entered: October 19, 1962. (A. 46)

2. No orders have been sought or entered respecting rehearing or extension of time within which to file this petition.

3. Jurisdiction to review each of these orders of the United States Court of Appeals for the Fifth Circuit is conferred upon this Honorable Court by Title 28 USC, §1254 (1) and §2101 (c). (A. 4, 5).

C.

QUESTIONS PRESENTED

1. Did the Court of Appeals so far depart from the accepted, usual and statutory course of judicial proceedings as to call for an exercise of this Court's power of supervision in the following particulars:

(a) Was the United States as Amicus Curiae, improperly and unnecessarily allowed to assume control and direction of private litigation?

(b) Can a Court of Appeals issue a personal writ across state lines returnable outside of the state where service thereof was made?

(c) Can a party intervene in an appellate court as a plaintiff to assert a permissive and independent claim against new defendants?

(d) Did the Court of Appeals usurp the jurisdiction and functions of the District Court in entering the orders set out in Section B-1 above?

2. Did the issuance of the Temporary Restraining Orders and the Preliminary Injunction Order against the State of Mississippi violate the Eleventh Amendment to the Constitution of the United States contrary to the holding of this court in the case of *Missouri v. Fiske* 290 US 18?

3. Did the appellant and the United States meet the burden of proving all facts essential to establish the jurisdiction which they claimed was vested in the Court of Appeals to conduct these proceedings?

4. Did the actions of the United States, as Amicus Curiae, amount to the assertion by it of individual and private Fourteenth Amendment rights contrary to the decisions of this Court in *Shelly v. Kraemer*, 334 U. S. 1, and *Hague v. CIO*, 307 U. S. 496?

5. Was the conduct of the enforcement proceedings in the Court of Appeals contrary to and in conflict with the holdings of the 8th Circuit in the cases of *Dowagiac Mfg. Co. v. M-M Plow Co.* 124 F 735 and *Meredith v. John Deere Plow Co.* 244 F 9?

6. Did the Show Cause Citations to Governor Barnett or Lt. Governor Johnson directing them to appear out of the state within less than 48 hours from the instant of attempted service of process accord to these parties due process of law required by the Fifth Amendment to the Constitution of the United States?

7. Can the Judicial Branch of the Federal Government mandatorily enjoin the Chief Executive of a State to perform future discretionary acts?

8. Did the issuance of the Preliminary Injunction and the Contempt Judgments by the Court of Appeals decide important questions of Federal Law which have not been but should be decided by this Court?

9. Did the issuance of the Temporary Restraining Orders and Preliminary Injunction Order by the Court of Appeals result in the decision of important state questions in a way that conflicted with applicable state law?

10. Was the Preliminary Injunction so broad, vague, general and indefinite as to be improvident or improper?

11. With regard to the Civil Contempt proceedings by the Court of Appeals:

(a) Can the United States intervene in a private lawsuit to invoke court proceedings in civil contempt?

(b) Can a Civil Contempt Judgment impose both fine and imprisonment for a single course of action alleged to constitute civil contempt?

(c) Can a final and unremittable fine, other than a compensatory fine payable to the complaining party, be assessed in a civil contempt judgment?

(d) Can a compensatory civil contempt fine be imposed absent a showing of damages by the party to whom such fine is payable?

(e) Can an order adjudging civil contempt impose purge terms which broaden the scope of the injunction on which the contempt citation was based?

(f) Should the civil contempt judgments against the Governor and the Lt. Governor now be dismissed as moot?

D.

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Because of the length of the provisions involved, their citation alone is set out at this point and pertinent text is set forth in the Appendix, as indicated.

The Constitution of the United States:

Article III, §2, Clause 2 (A. 1)
Article IV, §4 (A. 1)

Amendment V (A. 1)
Amendment X (A. 1)
Amendment XI (A. 2)

United States Code:

Title 18, USC, §401 (A. 2)
§402 (A. 2)
Title 28, USC, §547 (A. 3)
§713 (d) A. 4)
§1254 (1) (A. 4)
§1291 (A. 4)
§1345 (A. 5)
§1391 (b) (A. 5)
§1404 (a) (A. 5)
§2071 (A. 5)
§2101(c) (A. 5)
§2281 (A. 6)
§2403 (A. 6).
Title 42 USC §1983 (A. 7).

Rules of the U. S. Court of Appeals for the Fifth Circuit:

Rule 8 (A.7)
Rule 9 (A. 7)
Rule 10-1 (A. 7)

Federal Rules of Civil Procedure:

Rule 4 (f) (A. 8)
Rule 24 (A. 8)

Mississippi Constitution of 1890:

Article IV, §50 (A. 9)
Article V, §116 (A. 9)
§119 A. 10)
§123 (A. 10)

Article IX, §217 (A. 10)

Mississippi Code of 1942:

§3975 (A. 10); §3978 (A. 12)
§6724(a) & (c) (A. 12); §6726.7 (A. 13);
§8082(a) 1-3 and (b) (A. 14); §8576, Par. 1 (A. 15);
Section 3 of HB 403, Regular Legislative Session of 1962 (A. 16);
SB 1710, Regular Legislative Session of 1962 (A. 17).

E.

STATEMENT OF THE CASE

1.

JURISDICTION

Petitioners respectfully contend that there was no basis for Federal Jurisdiction in the U. S. Court of Appeals for the Fifth Circuit, which was the Court of first instance for all actions brought here for review. Petitioners contend that such jurisdiction as was asserted by the Honorable U. S. Court of Appeals for the Fifth Circuit was, under the Acts of Congress and the Constitution of the United States, possessed only by this Honorable Supreme Court and by the Honorable District Court for the Southern District of Mississippi.

2.

PLEADINGS AND PROCEEDINGS

On the 13th day of September, 1962, the U. S. District Court for the Southern District of Mississippi entered its Permanent Injunction in this cause. (A. 56).

On the 20th day of September, 1962, on the petition of the United States, as Amicus Curiae, the U. S. District

Court for the Southern District of Mississippi cited Registrar Ellis, Dean Lewis and Chancellor Williams of the University of Mississippi to appear on the 21st day of September, 1962 in Meridian, Mississippi to show cause why they should not be found in civil contempt of the court's injunction of September 13, 1962. On September 20, 1962, Appellant, Meredith, also moved the District Court to enjoin the Appellees from applying an act of the legislature of the State of Mississippi, SB 1501, to Meredith. The hearing on this motion was continued because the Court of Appeals set a conflicting hearing. The Court of Appeals entered an order enjoining any action under this act on the same day (A. 19).

On the 21st day of September, 1962 at 1:30 o'clock P.M. the said District Court heard the citation for contempt against these three college officials and found that they were not guilty of civil or criminal contempt of the court's permanent injunction order. [The Court of Appeals later came to the exact same conclusion. (A. 45).] Neither the Appellant nor the Amicus Curiae ever took any subsequent action concerning this matter in the U. S. District Court for the Southern District of Mississippi, but instead both the Appellant and the Amicus proceeded to conduct all subsequent matters in the Court of Appeals.

Section B-1 above presents in chronological sequence all of the sixteen orders entered by the U. S. Court of Appeals for the Fifth Circuit which are involved on this petition. To save prolixity, said orders and the petitions or motions on which they were granted are not restated here. The Court of Appeals conducted six original hearings in New Orleans, Louisiana in these proceedings, as follows:

(a) On the 24th day of September, 1962, an en banc hearing was held on that court's Show Cause Order directed to the Board of Trustees and University officials.

(b) On the 28th day of September, 1962, the Court heard en banc, the Show Cause Order directed to Governor Ross R. Barnett on a citation for civil contempt.

(c) On the 29th day of September, 1962, a division of the Court heard the citation for civil contempt against Lt. Governor Paul B. Johnson.

(d) On the 1st day of October, 1962 a division of the court heard a motion to dissolve the temporary restraining order issued September 25, 1962.

(e) On the 2nd day of October, 1962, a division of the Court held a hearing on the contempt orders issued against Governor Barnett and Lt. Governor Johnson.

(f) On the 12th day of October, 1962, the Court held an en banc hearing on the motion of the Appellant and the Amicus Curiae for a Preliminary Injunction and on the contempt orders issued against Governor Barnett and Lt. Governor Johnson.

3.

STATEMENT OF THE FACTS

On the evening of September 13, 1962 Governor Barnett made a state-wide radio and television broadcast to the citizens of the State of Mississippi. During the course of this broadcast he published a Proclamation, pursuant to a state legislative resolution and statute, directing the officials vested with the authority of operating the colleges and universities of the State of Mississippi to uphold the laws of the state and to oppose

any illegal usurpation of their powers. (Govt. Ex. No. 6, Hearing 9/28/62 p. 69).

On the 18th day of September, 1962, the United States requested leave of court to appear as amicus curiae in this cause. It did not make this appearance in the U. S. District Court, whose permanent injunction had been issued prior to the Governor's broadcast, but strangely, it went instead, before a division of the Court of Appeals, then sitting in another case in Hattiesburg, Mississippi, and, *without notice*, applied for leave to intervene as an Amicus Curiae. On this motion, *without a hearing*, this division granted Amicus Curiae status to the United States to appear both in that Court and in the District Court.

On the 20th day of September, 1962, the legislature of the State of Mississippi enacted Senate Bill 1501 (Govt. Ex. No. 12, Hearing 10/12/62 p. 15) making it a misdemeanor for any person charged with a crime involving moral turpitude to attempt to enroll in any institution of higher learning in the State of Mississippi. On the same day Governor Barnett, in the exercise of the police power of the State of Mississippi, by Proclamation, directed the Board of Trustees of Institutions of Higher Learning to refuse admission to the University of Mississippi to James H. Meredith (Govt. Ex. No. 7, Hearing 9/28/62 p. 69). On the same date, and contrary to the wishes of Governor Barnett, this Board of Trustees appointed the Governor as Registrar of the University of Mississippi for the purpose of dealing with the application of Meredith (A. 59). This date was the first day for admission of transfer students. Meredith presented himself at the University for admission. Governor Barnett refused him admission and delivered

to Meredith at that time a Proclamation covering such denial (Govt. Ex. No. 8, Hearing 9/28/62 p. 69).

On the 25th day of September, 1962 Governor Barnett directed all sheriffs and law enforcement officials of the counties and municipalities of Mississippi to proceed to do all things necessary to the end that the peace and security of the people of the state would be fully protected. (Govt. Ex. No. 10, Hearing 9/28/62, p. 70). In New Orleans the Court of Appeals, on the applications of the Amicus Curiae and Meredith, granted Temporary Restraining Orders, without notice, or hearing, enjoining the State of Mississippi, Governor Barnett, Lt. Governor Johnson and numerous other persons who had never been parties to this cause at any stage of the proceedings. (A. 26, 31).

Also on the 25th day of September, the Board of Trustees entered an order stating that Governor Barnett's appointment as Registrar was revoked. Subsequent thereto, the Governor issued and personally delivered to James H. Meredith a Proclamation finally denying him admission to the University of Mississippi (Govt. Ex. No. 11, Hearing 9/28/62, p. 70). On the evening of this day, the Court of Appeals, on the application of the Amicus Curiae, without notice or hearing, issued a Citation to Governor Barnett to appear in New Orleans, Louisiana and Show Cause why he should not be held in civil contempt. (A. 33). A copy of the court's Show Cause Citation was "attempted" to be served on September 26, 1962 but no personal or other service was made on the Governor. The return of the Deputy U. S. Marshall on this Citation shows that he did not leave a copy thereof at the Governor's office or at his home. (Govt. Ex. No. 3, Hearing 9/28/62, p. 23).

On the 26th day of September, 1962, Lt. Governor Johnson met Meredith at the entrance to the campus of the University in Oxford and, acting on behalf of Governor Barnett, denied Meredith admittance to the University of Mississippi. (Hearing 9/29/62, p. 19). On the 27th day of September, 1962, a Deputy U. S. Marshal "served" a Citation in Civil Contempt issued to him "by leaving a true and correct copy thereof with Mrs. Paul B. Johnson, Jr., personally." (Govt. Ex. No. 3, Hearing 9/29/62, p. 10).

On Sunday, September 30, 1962, Meredith, accompanied by armed U. S. Marshals, entered the campus of the University of Mississippi and, upon demand by the United States that housing be furnished immediately, he and the accompanying US marshals were assigned to a suite of rooms in a dormitory at said institution. Demands for the special registration of Meredith on that Sunday were denied by the University.

On October 1, 1962, Meredith registered as a student at the University of Mississippi, and since that date he has been continuously enrolled as a student in said institution and has been attending classes there.

F.

ARGUMENT

I.

THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED, USUAL AND STATUTORY COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

A simple recitation of the fact that in the course of thirty days an *appellate* court of limited jurisdiction

issued sixteen original judgments and orders in Hattiesburg, Mississippi, New Orleans, Louisiana and Atlanta, Georgia in a case which had previously been remanded to the District Court and that all such proceedings were done after the issuance of the District Court's Permanent Injunction, should be sufficient argument to carry this point without the necessity of detailing that *none* of these orders were directed to the court of original jurisdiction whose actions this appellate court is constituted to review. The majority of these orders were directed to persons who had never been parties to the action in the District Court. At least such recitation will indicate that no precedent exists for such a procedure. We pray the court's consideration of the following analysis.

a.

The United States, as Amicus Curiae, Improperly Assumed Control and Direction of Private Litigation.

The case of *Meredith v. Fair* was an action by an individual citizen asserting rights under the Fourteenth Amendment to the Constitution of the United States. The United States applied to the Court of Appeals for the designation of the United States as Amicus Curiae, but, under this aegis, instead of befriending the court it dominated and controlled all subsequent proceedings which are here sought to be reviewed.

An allegation was made in the application to the court that such designation was necessary because the interest of the United States could not be adequately represented by the "*Plaintiff*" in the proceeding. Not only was no evidence introduced to support this allegation but rather the contrary clearly appears from

the record which show that the "*Plaintiff*" secured substantially duplicating orders in the Court of Appeals at most of the stages in this proceeding.

Just why the Department of Justice assumed this role and why it chose to conduct its actions in the appellate court and not in the court having jurisdiction of the cause is not readily discernible from any study of legal precedents. What is abundantly clear is that the allowance of this course of judicial proceeding by the Court of Appeals is so unusual and unaccepted that it should invoke the powers of supervision of this Honorable Supreme Court.

b.

The Court of Appeals Cannot Issue Personal Writs Across State Lines Returnable Outside of the State Where Service Thereof Was Made.

Historically and traditionally, personal summonses to parties-defendant in courts of the Federal Judiciary have been limited by the territorial boundaries of the sovereign states which formed and composed the Federal Union, in the absence of a specific statute of the United States to the contrary. Rule 4(f), *Federal Rules of Civil Procedure*. (A. 8). Yet, in this instance, the Court of Appeals issued summonses which did not comply with its own Rule 9 or with Rule 59(1) of this Supreme Court, and caused such summonses to be served by Deputy Marshals who were not acting as the marshals of that court (Hearing 10/12/62 p. 19). Title 28 *USC*, §547(a). (A. 3). This process allegedly served in Mississippi was returnable in the State of Louisiana.

It is interesting to note that this court has not yet seen fit to adopt the provision of the 1955 Report of

the Advisory Committee, which proposed a liberalization of Rule 4(f) to permit service outside of the state but within 100 miles of the place where the suit is to be tried. *Report of the Advisory Committee*, Vol. 3-A, Pages 542-544. Neither attempted service was within a 100 mile radius of New Orleans. The Fifth Circuit has ruled that service outside of the territorial limits of the state by a District Court is unavailing. *Hanes Supply Co. v. Valley Evaporating Co.*, 261 F. 2d 29. Cf. *Hess v. Pawloski* 274 US 352, 71 L. Ed. 1091, 47 S. Ct. 632; *Wuchter v. Pizzutti* 276 US 13, 72 L. Ed. 446, 48 S. Ct. 259, and *Ahrens v. Clark*, 335 US 138, 92 L. Ed. 1898, 68 S. Ct. 1443.

c.

Intervention in An Appellate Court as a Plaintiff to Assert a Permissive and Independent Claim Against New Defendants is Unprecedented.

The United States made a drastic change in its position in these proceedings when the question of the bar of the Eleventh Amendment was raised. Despite its designation as Amicus Curiae, the United States now apparently wishes to assert that it became a new party-plaintiff in the case of *Meredith v. Fair* in the Court of Appeals. Its amicus curiae pleadings assert a *general right* on its own behalf to preserve the administration of justice and the integrity of the judicial processes of the United States courts as distinguished from an amicus curiae duty to aid the court in this cause. Such a general right, if it did exist, would be a separate and distinct claim from any claim asserted by the original plaintiff, Meredith. cf. *In Re Debs*, 158 U. S. 564, 39 L. Ed. 1092, 15 S. Ct. 900.

In dealing with the subject of intervention in courts of first instance, this court has prescribed two distinct conditions of intervention:

(1) Intervention as of right, under Rule 24 (a) of the *Federal Rules of Civil Procedure,* (A. 8) must involve a situation where the applicant is or may be bound by the judgment in the action in which he intervenes. Barron & Holtzoff, *Federal Practice and Procedure,* §597.

(2) Permissive intervention under Rule 24(b) is applicable, where a statute of the United States confers a conditional right to intervene or, the claim asserted involves a common question of law or fact. None of these conditions were here present if the United States is asserting a general right in its own behalf. It should also be of interest to note that this court requires any intervention to be accomplished only after notice served on all parties affected thereby. Rule 24(c). cf. 28 USC 2403.

Our research has failed to disclose a case in which any Federal Court has ever permitted a party to intervene as a plaintiff at the appellate level. To the contrary are the cases of *Smith v. American Asiatic Underwriters,* 134 F. 2d 233, from the 9th Circuit, *Wenborne-Karpen Drier Co. v. Cutler Dry Kiln Co.,* 292 F. 861, from the 2nd Circuit, and *Holland v. Board of Public Instruction,* 258 F. 2d 730, from the 5th Circuit.

d.

The Court of Appeals Usurped the Jurisdiction and Functions of the District Court in These Proceedings.

Title 28, *USC,* §1291, grants to the Court of Appeals the only possible basis for jurisdiction of any of these actions, and this statute (A. 4) specifies that this jur-

isdiction is entirely appellate. The appeal in *Meredith v. Fair* was long ago heard and decided by the Court of Appeals. Its mandate had been returned to the District Court and, prior to the institution of any of the proceedings here complained of, that court had entered its Permanent Injunction in full conformity with the mandate of the Court of Appeals. Never at any time was it shown that the District Court was, because of the condition of its docket or for any other reason, unable to promptly take action to enforce the Court of Appeals mandates or its own orders issued pursuant thereto. It was not shown and, indeed, it could not be shown that the District Court was corrupt or unwilling to obey the mandates of the Court of Appeals. The District Court was simply ignored, yet *it was the only court possessed with jurisdiction of the cause.* Indeed the District Court is the only court in the Federal Jurisdiction System, other than this Honorable Supreme Court, which is possessed of any constitutional or statutory jurisdiction of a suit by the United States against a sovereign. cf. 28 *USC* §1345, 1391(b) & 1404(a) (A.5); U. S. *Constitution*, Article III, §2, Clause 2. (A. 1).

Every one of the judgments and orders entered by the Court of Appeals, if valid at all, should have been entered, in the accepted, usual and statutory course of judicial proceedings, only by the District Court which was possessed of original jurisdiction.

We respectfully direct the court's attention to the remarks of the concurring Court of Appeals Judges that the handling of this matter by the District Court after their order of October 19, 1962 "should tend to restore normalcy in Mississippi and would comport with good judicial administration under the circum-

stances". (A. 54). cf. *Phillips v. U. S.*, 312 U. S. 246, 85 L. Ed. 800, 61 S. Ct. 480.

The District Court was possessed of all powers which were claimed by the Court of Appeals. It had venue of the original action. In addition, its rules contemplate the conduct of fact finding litigation. On the contrary we call to the Court's attention that under the doctrine of *inclusio unius est exclusio alterius* the Court of Appeals has not adopted and has rejected the Federal Rules of Civil Procedure (with certain exceptions, none of which are pertinent here). *Rules of the Fifth Circuit* Rule 10, cf. Rule 8.

The Legislature of the State of Mississippi was convened in special session during most of these proceedings, which involved both the Governor and the Lt. Governor, who is the President of the Senate. Yet, at many stages during these new proceedings which were originated against them in the appellate court, process was issued to them, returnable hundreds of miles away in another state. The annals of jurisprudence of this country disclose no precedent, let alone an accepted and usual course for the District Court proceedings which were here instituted and conducted in a court possessing only limited appellate jurisdiction. Indeed, the absence of any appropriate rules in the Court of Appeals governing these proceedings should be most indicative of the complete novelty involved here. As the best argument indicating the vital importance of "playing by the rules" we respectfully direct the Court's attention to the following excerpts from the dissenting opinion in the case of *Boman & Birmingham Transit Company* 292 F. 2d 4.

"P. • • Since we must rest our decision on the Constitution alone, we must set aside predilections on

social policy and adhere to the settled rules which restrict the exercise of our power to judicial review —remembering that the only restraint upon this power is our own sense of self-restraint'.[1]

"The author[2] then illustrates his point by supposing that two baseball teams were tied in the last inning of the World Series and the umpire is morally convinced that the Yankees ought to win. The Yankee runner is tagged with the ball forty-five feet from the home plate, and the umpire, acting on his understanding of the precepts of natural law, rules that the runner is safe at home. Those who bet on the Dodgers are then confronted with the problem of whether the moral law requires them to pay their bets. He closes with this question, which he answers himself:

" 'Does the decision of the umpire prevail over the rules of the game? One of the rules of the game is that both teams shall obey the decision of the umpire; and the umpire has promised to stick to the rule book.' "

Regardless of how certain the Court of Appeals may have been that they alone had the correct moral or social concept of how the litigation then properly cognizable only by the District Court or this Court should be decided, the rules which have governed legal procedures since the establishment of the Federal Judicial System, the rules which set them above District Courts, do not unshackle them from the necessity of exercising their *review* powers only *according to the rules.*

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[1]This quotation is from the dissent of Chief Justice Vinson in Barrows v. Jackson, 1953, 346 U. S. 249, 269, 73 S. Ct. 1031, 97 L. Ed. 1586."

[2]Ralph T. Catterall of the State Corporation Commission of Virginia, Vol. 42, American Bar Journal No. 9, September, 1956, p. 833.

II.

THE ISSUANCE OF THE TEMPORARY RESTRAINING ORDERS AND THE PRELIMINARY INJUNCTION ORDER AGAINST THE STATE OF MISSISSIPPI VIOLATED THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND WAS CONTRARY TO THE HOLDING OF THIS COURT IN THE CASE OF *MISSOURI V. FISKE*, 290 U. S. 18.

James H. Meredith originally brought suit against the persons who composed the Board of Trustees of Institutions of Higher Learning. This was not brought or maintained as a suit against the State of Mississippi. Under the strict provisions of the Eleventh Amendment to the Constitution of the United States (A. 2), as well as under the provisions of Title 42, *USC*, §1983, (A. 7) (the basis for the asserted jurisdiction in the original action) it could not have been entertained as a suit directly or indirectly against the State of Mississippi. By its plain, direct terms the Eleventh Amendment expressly prohibits the judicial power of the courts of the United States from being extended to suits by individuals against sovereign states. Section 1983 of Title 42 only permits an action against a "person". This does not include a state or governmental unit. *Monroe v. Pape* 365 US 167, 5 L. Ed. 2d 492, 81 S. Ct. 473, *Egan v. Aurora* 367 US 514, 5 L. Ed. 2d 741, 81 S. Ct. 684.

Stone v. Interstate Natural Gas Co. (CA 5) 103 F. 2d 544, affirmed 308 U. S. 522, 84 L. Ed. 442, 60 S. Ct. 292, taught that even a suit against the Attorney General of the State was not necessarily a suit against the state itself and that litigation involving state officials did not per se bind the State of Mississippi. In the case of

Louisiana Land & Exploration Co. v. State Mineral Board (*CA 5*) 229 F. 2d 5, the Court of Appeals held that the determination as to whether or not a particular suit against a state agency amounted to a suit against the state was to be decided by the *law of the state* and that if the state courts decided that a suit against a state agency was directed to it in its official capacity and not to the members of the agency individually, the Eleventh Amendment would prohibit the action. No state court decision has ever been rendered as to whether a suit against the state officials sued at any stage of the proceedings here is in fact a constitutionally prohibited suit.

In the case of *Fitts v. McGhee*, 172 U. S. 516, 43 L. Ed. 535, 19 S. Ct. 269 this court stated:

> " 'The very object and purpose of the eleventh amendment were to prevent the indignity of subjecting a state to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several states of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other states or aliens, or that the course of their public policy and the administration of their public affairs should be subject to, and controlled by, the mandates of judicial tribunals without their consent, and in favor of individual interests. To secure the manifest purposes of the constitutional exemption guaranteed by the eleventh amendment requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance

of its purpose. In this spirit it must be held to cover, not only suits brought against a state by name, but those also against its officers, agents, and representatives, where the state, though not named as such, is, nevertheless, the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates * * *."

"* * *

"If these principles be applied in the present case, there is no escape from the conclusion that, although the state of Alabama was dismissed as a party defendant, this suit against its officers is really one against the state. As a state can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings, in execution of the statute of February 9, 1895, is one which restrains the state itself, and the suit is consequently as much against the state as if the state were named as a party defendant on the record."

Although the Eleventh Amendment does not by its terms bar a citizen from suing his own state, this Honorable Court has squarely held that such a suit cannot be maintained, in the absence of the consent of the state, by one of its own citizens. *Hans v. Louisiana*, 134 U. S. 1, 33 L. Ed. 842, 10 S. Ct. 504.

This entire proceeding is contrary to the holding of this court in *Missouri v. Fiske*, 290 U. S. 18, 78 L. Ed. 145, 54 S. Ct. 18. In that case an ancillary action was started in a U. S. District Court. The State of Missouri was made a party and an injunction was sought against the state to stop the prosecution of a citation in a state court, which prosecution, it was found, would interfere with the in rem subject matter of the Federal Court action. This court stated:

"* * * The Eleventh Amendment is an explicit limitation of the judicial power of the United States. * * * *However important that power, it cannot extend into the forbidden sphere.*[1] Considerations of convenience open no avenue of escape from the restriction. The 'entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given.' Re New York, 256 U. S. 490, 497 * * *. Such a suit cannot be entertained upon the ground that the controversy arises under the Constitution or laws of the United States. * * *

"The ancillary and supplemental bill is brought by the respondents directly against the State of Missouri. It is not a proceeding within the principle that suit may be brought against state officers to restrain an attempt to enforce an unconstitutional enactment * * *. *Here, respondents are proceeding against the State itself to prevent the exercise of its authority to maintain a suit in its own court.*

"The proceeding by ancillary and supplemental bill to restrain the State from this exercise of authority is unquestionably a 'suit'. * * * Expressly applying to suits in equity as well as at law, the Amendment *necessarily embraces demands for the enforcement of equitable rights and the prosecution of equitable remedies when these are asserted and prosecuted by an individual against a state.* This conception of the Amendment has had abundant illustration. * * * (Citations).

"* * * *This is not less a suit against the State because the bill is ancillary and supplemental. The State*

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[1]All emphasis in quotations is supplied.

had not been a party to the litigation which resulted in the decree upon which respondents rely. The State has not come into the suit for the purpose of litigating the rights asserted. Respondents are attempting to subject the State, without its consent, to the court's process.

"*The question, then, is whether the purpose to protect the jurisdiction of the Federal Court, and to maintain its decree against the proceeding of the State in the State Court, removes the suit from the application of the Eleventh Amendment. The exercise of the judicial power cannot be protected by judicial action which the Constitution specifically provides is beyond the judicial power.* Thus, when it appears that a State is an indispensable party to enable a Federal court to grant relief sought by private parties, and the State has not consented to be sued, the court will refuse to take jurisdiction. * * * And if a State, unless it consents, cannot be brought into a suit by original bill, to enable a Federal court to acquire jurisdiction, no basis appears for the contention that a State in the absence of consent may be sued by means of an ancillary and supplemental bill *in order to enforce a decree.*

"The fact that a suit in a federal court is *in rem*, or *quasi in rem*, furnishes no ground for the issue of process against a non-consenting state. * * *.

"* * *

"* * * The contention that the question of ownership of the shares has been finally determined by the Federal Court affords no ground for the conclusion that the Federal Court may entertain a suit against the State, without its consent, to prevent the

State from seeking to litigate that question in the State Court."

"The decree of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court with directions to dismiss the ancillary and supplemental bill."

The fact that this present assertion of ancillary jurisdiction is made by a court of limited appellate jurisdiction, as well as the fact that such relief is being sought by a newcomer to the litigation, designated as Amicus Curiae, cannot operate separately or together to create a jurisdictional situation whereby the appellant, Meredith, would be enabled to do that which the Eleventh Amendment forbids, to-wit: sue the State of Mississippi without its consent.

Thus, in summary analysis, we find the Court of Appeals granting an Amicus Curiae a Writ of Injunction which the Court of first instance could not have entered as either original or ancillary relief, on the basis that what the Amicus really sought, by its motion to be designated as Amicus, was not the right to advise the court as to the merits of the controversy but to assert a *new distinct, separate and independent cause of action* based upon new facts and requiring the presence, as a party, of a sovereign state. Such a state of facts cannot be made to accord with the express prohibition of the Eleventh Amendment under the holding of this court in *Missouri v. Fiske*, supra, or with any statutory grant of jurisdiction by act of Congress.

Neither the State of Mississippi nor any of the other new party "defendants" in the appellate court have had their *day in court*. As to such new "defendants" the proceedings were *coram non judice*, and they are in no way bound thereby.

III.

NEITHER THE APPELLANT NOR THE UNITED STATES MET THE BURDEN OF PROVING THE FACTS ESSENTIAL TO ESTABLISH SUCH JURISDICTION AS THEY CLAIMED WAS VESTED IN THE COURT OF APPEALS.

By its own name, "Ancillary Jurisdiction" indicates it must depend upon the prior presence of a case or controversy before a court which asserts such jurisdiction. At the time that these "ancillary" proceedings took place in the Court of Appeals, there was no such jurisdictional prior case then in that court to which appendant or "ancillary" jurisdiction could attach.

The Court of Appeals is possessed of appellate review jurisdiction only. It heard an appeal on the merits from the District Court and on the basis of that appeal, it reached a decision that the case should be reversed and remanded with directions. This decision was implemented by the court's mandate; and after the mandate was sent down the District Court fully complied with the directions of the appellate court. If there is an end to appellate review proceedings, this end was fully reached before any "ancillary" proceedings were commenced.

The only possibility which existed for the assertion of any residual jurisdiction was an injunction which, by its own terms, was to last only "pending such time as the District Court has issued and enforced the orders herein required and until such time as there has been a full and actual compliance in good faith with each and all of said orders by the actual admission of plaintiff-appellant to, and the continued attendance thereat,

at the University, on the same basis as other students who attend the University."

This court has held that the burden of proving all jurisdictional facts rests upon the party asserting that the court has jurisdiction. *McNutt v. General Motors Acceptance Corp.*, 298 U. S. 178, 56 S. Ct. 780, 80 L. Ed. 1135. In fact, since more than a century ago in *Turner v. Bank of North America*, 4 Dall. 8, 1 L. Ed. 718, this court has adhered to the doctrine that courts of the United States were presumed to be without jurisdiction unless the contrary affirmatively appears from the record. No proof was offered to show that the conditions upon which the court's injunction was to remain outstanding had not, in fact, completely transpired.

Proof that parties other than those addressed in the injunction might be involved in some questionable activities cannot suffice. An injunction cannot be issued which is so broad as to make punishable the conduct of persons who act independently of the parties to the litigation and whose rights have not been adjudged according to law. *Regal Knitwear Co. v. National Labor Relations Board*, 324 U. S. 9, 89 L. Ed. 661, 65 S. Ct. 478; *Chase National Bank v. Norwalk*, 291 U. S. 431, 78 L. Ed. 894, 54 S. Ct. 475; *Alemite Mfg. Corp. v. Staff*, 42 F. 2d 832, *Scott v. Donald* 165 U. S. 107, 41 L. Ed. 648, 17 S. Ct. 262.

It is patent that a court which has no jurisdiction at all cannot exercise "ancillary" jurisdiction. The record here makes it equally clear that the parties who had the burden of proving jurisdiction failed to prove that any conditions existed which would give life to the only order which could vest a modicum of jurisdiction in the Court of Appeals.

IV.

THE ACTIONS OF THE AMICUS CURIAE CONSTITUTE AN ASSERTION BY IT OF INDIVIDUAL AND PRIVATE FOURTEENTH AMENDMENT RIGHTS CONTRARY TO THE DECISIONS OF THIS COURT IN *SHELLEY v. KRAEMER*, 334 U. S. 1, AND *HAGUE v. CIO*, 307 U. S. 496.

No case has ever held that the Federal Government acquired any rights under the Fourteenth Amendment to the Constitution. In the case of *Shelley v. Kraemer*, 344 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836, this court held that the rights created by the due process and equal protection clauses of the Fourteenth Amendment are guaranteed *to the individual*, and the rights established are *personal* rights.

In *Hague v. CIO*, 307 U. S. 496, 83 L. Ed. 1423, 59 S. Ct. 954 this court stated:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the 14th Amendment secures for citizens of the United States." cf. *U. S. v. Alabama*, 171 F. Supp. 720, 729, (CA 5) 267 F. 2d 808.

Despite these authorities, an examination of the record discloses that the United States, under its designation of Amicus Curiae, not only has brought civil contempt proceedings (which exist solely for the benefit of the complainant and not for any public purpose, see XI, infra) but also has sought and received an injunction and restraining order—all as a part of a private law suit by an individual person asserting Fourteenth Amendment rights against other individual citizens. Indeed, the entire control and direction of this litigation

has been assumed by the amicus curiae to assert rights which it has no power to assert, in a forum lacking jurisdiction.

V.

THE ACTIONS OF THE COURT OF APPEALS IN CONDUCTING ENFORCEMENT PROCEEDINGS CONFLICTED WITH THE HOLDINGS OF THE EIGHTH CIRCUIT IN THE CASES OF *DOWAGIAC MFG. CO. v. MINNESOTA-MOLINE PLOW CO.*, 124 F. 735, and *MEREDITH v. JOHN DEERE PLOW CO.*, 244 F. 2d 9.

The enforcement of a final judgment or decree after an appeal has been remanded to the court of original jurisdiction is a function of that court. The proper function of a Court of Appeals is to provide a calm, deliberate and dispassionate forum for reviewing the legality of that done in a trial court where decisions are frequently made on the spur of the moment and in the sometimes heat of trial proceedings.

The "All Writs Statute", 28 USC 1651, is not a catch-all which creates any new type of appellate review power. It only permits the issuance of writs by a Court of Appeals in exceptional cases where such writs are necessary to aid existing *appellate* jurisdiction. *U. S. v. Mayer*, 235 U. S. 55, 59 L. Ed. 129, 35 S. Ct. 16; 36 C. J. S. 784; cf. *Ex Parte Republic of Peru*, 318 U. S. 578, 87 L. Ed. 1014, 63 S. Ct. 793. When an appeal is no longer pending before a Court of Appeals, the right to issue such writs is at an end. In the case of *Omaha Electric Light & Power Co. v. Omaha*, 216 F. 848, 855, the Eighth Circuit stated:

"The jurisdiction of an appellate court differs radically from that of a trial court. It exists solely for

the purpose of review. As soon as that is finished the suit is remitted to the trial court."

To the same effect are *Wooten v. Bomar* (CA 6) 266 F. 2d 27, and *Mutual Life Insurance Co. of New York v. Holly* (CA 7), 135 F. 2d 675.

The enforcement of a final decree issued by a District Court pursuant to the mandate of an appellate court is subject to supervision and direction by Writ of Mandamus to that court or by way of a new appeal. *Sibbald v. U. S.*, 37 U. S. 488, 12 Pet. 488, 9 L. Ed. 1167; *City National Bank v. Hunter*, 152 U. S. 512, 38 L. Ed. 534, 14 S. Ct. 675; cf. *U. S. v. E. I. Du Pont de Nemours*, 366 U. S. 316, 6 L. Ed. 2d 318, 81 S. Ct. 1243.

In the case of *Ohio Oil Company v. Thompson*, 120 F. 2d 831, the Eighth Circuit pointed out:

> "It is for the district court to which the mandate (of the Supreme Court) is directed, to construe and *execute* such mandate; and if that court (1) misconstrues or (2) refuses to enforce it or (3) attempts 'to vary it', or (4) 'to intermeddle with it', it is for the Supreme Court alone to construe and enforce its own mandate."

No one of these four conditions are present here. The mandate of the Court of Appeals to the District Court directed the entry of an injunction of broader scope than that prayed for in the complaint. The injunction order of the District Court clearly complies with the directions of the mandate, a fact which has never been questioned. The District Court has never refused to enforce the mandate of the Court of Appeals or its own injunction, nor has it attempted to vary it or intermeddle with it. The District Court in this case

continues to retain the actual and proper powers of a District Court.

The proceedings here are directly contrary to the holdings of the Eighth Circuit. In the case of *Dowagiac Mfg. Co. v. Minnesota-Moline Plow Co.*, 124 F. 735, the opinion of the court, in pertinent part was as follows:

> "An examination of the affidavits discloses the fact that *the contempt charged in this case occurred subsequent to the filing of the mandate of this court in the United States Circuit Court.* The proposition to which Mr. Howard has addressed himself, to the effect that every party in a proceeding is bound to take notice of the order of the court, and obey it, is undoubtedly sound; and, *if there had been a violation of the injunction which was practically ordered by this court during the time antecedent to the remission of the mandate, the court would proceed to punish for contempt*, if it thought proper to do so. But when the mandate of this Court was remitted to the Circuit Court, the decree of that court was, in effect, modified, as declared by the opinion of this court; or, if not modified simply by the filing of that mandate, it was in the power of that court, upon motion of the successful party, to so change its decree that it would read in accordance with the opinion then handed to it by this court. If that application has not been made, it may still be made; and *if there has been a violation of that decree since the mandate was remitted, we are unanimously of the opinion that the jurisdiction to punish for that violation is not in this court, but in the Circuit Court.* For this reason, the demurrer will be sustained, and the petition dismissed."

The United States Court of Appeals for the Eighth Circuit in 1957, in the case of *Meredith v. John Deere Plow Co.*, 244 F. 2d 9, 10, cert. den. 355 U. S. 831, 2 L. Ed. 2d 43, 78 S. Ct. 44, stated:

> "In an effort to put an end to appellant's repetitive suits against it on the alleged contract, appellee has moved for leave to file in this Court a petition for a writ of injunction. No injunctive relief was sought by way of counterclaim in the District Court, nor has appellee otherwise undertaken to obtain from that Court any such protection. *No controlling reason is apparent why, as against the normal prerogative and function of the District Court, we should be asked to entertain such a petition in original jurisdiction.*
>
> "In addition, the elements of hearing that might be involved in relation to the issuing of a writ, and the incidents of enforcement that could become necessary from any granting of it are matters which a single-judge court manifestly would be in a position to deal with, from the standpoint of both parties, more routinely, expeditiously, conveniently and economically than we."

We respectfully submit that the appellate court's functions here were not only improper and a departure from accepted and usual practice, but also created a conflict between the circuits, as well as a conflict with prior rulings of this court.

VI.

THE SHOW CAUSE CITATIONS ISSUED TO GOVERNOR BARNETT AND LT. GOVERNOR JOHNSON WHICH REQUIRED THEM TO APPEAR OUTSIDE OF THE STATE WITHIN LESS THAN FORTY-EIGHT HOURS FROM

THE INSTANT OF ATTEMPTED SERVICE OF SUCH CITATIONS DID NOT ACCORD CONSTITUTIONAL AND PROCEDURAL DUE PROCESS TO THESE PARTIES.

The returns of the officers showing attempts made to serve the citations in civil contempt against Governor Barnett and Lt. Governor Johnson show that such "attempts" were made less than forty-eight hours prior to the return time of these citations (Govt. Ex. No. 3 & Appellant's Ex. No. 2, Hearing 9/28/62; p. 22, 57; Govt. Ex. No. 3, Hearing 9/29/62). The citations themselves show that they were returnable in New Orleans, Louisiana. The returns do not show personal service on either respondent; but, *assuming arguendo that they* had received personal service, the shortness of the time interval would have constituted a lack of due process. *Roller v. Holly*, 176 U. S. 398, 44 L. Ed. 520, 20 S. Ct. 410.

VII.

THE JUDICIAL BRANCH OF THE FEDERAL GOVERNMENT CANNOT MANDATORILY ENJOIN THE CHIEF EXECUTIVE OF A STATE TO PERFORM FUTURE DISCRETIONARY ACTS.

The acts of Governor Barnett were all done and performed in his official capacity as the Chief Executive Officer of the State of Mississippi, charged with the enforcement of its laws. *Mississippi Constitution of* 1890, Article V, §§116, 119 and 123. (A. 9). Indeed, the Temporary Restraining Order and the Injunction issued against him by the Court of Appeals require nothing at the hands of Ross R. Barnett, an individual person. The prohibitions contained in these injunctions are not personal but official, and are directed against

him as the Governor of the State. Assuming arguendo that the Constitution of the United States does not prohibit the issuance of such a prohibitory injunction and restraining order, properly framed, the Court must still consider that the Court of Appeals did, in its contempt judgment (A. 38), go beyond any of the prohibitory terms of the restraining order or injunction and mandatorily require the affirmative act of the Governor as to the issuance of specified and delineated orders to peace officers of the state. In the contempt judgment issued against Lt. Governor Johnson (A. 41), he was required to issue similar orders at any time he might be acting as Governor.

Neither the statutory law of the State of Mississippi nor its Constitution vests in the Governor or the Lt. Governor the authority or power to order local police officials to perform their peace-keeping activities in any particular way. The only authority granted to the Governor to control such local officials involves the use of the National Guard (which at the time of the issuance of the Temporary Restraining Order had been federalized), and then only after a breakdown in local law enforcement. *Mississippi Code of* 1942, §§3975, 3978 and 8576 (A. 10), Mississippi Constitution §217 (A. 9).

Peace-keeping activities on the campus of the University of Mississippi are, of course, vested in the local sheriff and other peace officers and in the Board of Trustees of Institutions of Higher Learning. *Mississippi* Code of 1942, §§6724(a) & (c), 6726.7; SB 1710 and §3 of HB 403, Regular Legislative Session of 1962. (A. 12) Mississippi has no state police force. Its Highway Patrol is only what the name implies. It has no general police powers off the highways of the state. §8082(a) 1-3, and (b) (A. 14).

Aside From the Procedural Irregularities In the Issuance by Courts of Mandatory Orders to the Executive Department of a State, There is Involved in Such a Procedure, the Gravest of Constitutional Dangers and Conflicts Between the Executive and the Judicial Power.

It would be impractical to detail here the multitude of duties imposed on the Governor of Mississippi, but among them is that of Commander in Chief of the State Militia when not called into the service of the Nation. He directs all executive business of the State; he is the directing head of all executive departments of the State Government and may require information from them as to the status of their departments at any time; he is required to see that the laws of the state are faithfully executed; he may call the legislature into extraordinary session when the circumstances require; he is required to communicate to each regular session of the legislature the condition of the State and recommend the passage of such measures as he may deem expedient. He is answerable to the people for failure to perform his duties only by way of impeachment [§50, *Constitution of Mississippi.* (A. 9)].

To admit the power of the Federal Courts to arrest a Governor and place him in prison or to mandate a Governor to perform the will of such Courts in the exercise of his official powers would be to make of a Governor of a sovereign state only a puppet of the Courts and install such Courts as the Governor.

If the Federal Courts have the power to assume mandatory injunctive control of the official powers of the Governor, by that same power they would be able to assume the powers of the legislative branch and

prescribe by their mandate what laws the legislature should or should not pass.

With the sovereign powers of a state so preempted by the Judiciary, the people of such a State would no longer be subject to the control of a "Republican Form of Government", such as guaranteed by Article 4, Section 4, of the Federal Constitution. (A. 1) Such encroachment on the sovereign powers of a State must surely mark the end of the dual system of sovereignty, federal and state, under which this nation was established.

With the sovereign power of the states usurped by the Federal Government, there would be no need for United States Senators and Representatives to represent the people of a puppet state for such a state would be nothing but a helpless dependency of the Federal Government.

In addition to the constitutional questions involved, there still remains the consideration of public policy. Under our system of dual sovereignty of the States and the United States, it would be unseemly for the officials of one sovereignty to exercise any power in such a way as to dominate and control the exercise of discretionary powers by the other. Such exercise would destroy the balance of equal sovereignty, prevent cooperation in attainment of common objectives, and undermine the spirit of unity which has and should prevade the Federal Union.

It is for these reasons, no doubt, that according to the presently established law, the Chief Executive of a State has been uniformly held to be immune from the subpoena of any Court. Such principle of law is clearly stated in 16 C.J.S., p. 382, §159:

"It is well settled that public officials are not bound to disclose state secrets or to submit public papers to judicial scrutiny. Partly on this ground, and partly because of the immunity of the executive from judicial control on account of the tripartite separation of powers, it seems now to be undisputed that courts cannot compel the attendance of the chief executive as a witness. The same doctrine has been applied where the governor of a state refused to obey a subpoena directed to him as an individual and requiring him to produce in court an engrossed copy of a statute and deposition, and also where that officer had been subpoenaed to appear before the grand jury and give testimony concerning riots which were under investigation."

This rule has also been enunciated by the Courts of at least twelve states, said decisions being styled as follows:

Hawkins v. Governor, 1 Ark. 570; *Bisbee v. Drew, Gov.*, 17 Fla. 67; *Low v. Towns*, 8 Ga. 360; *People v. Bissell*, 19 Ill. 229; *People v. Yates*, 40 Ill. 126; *State v. Warmoth*, 22 La. Ann. 1; *In re Donnell*, 32 Maine 508; *Southerland v. Governor*, 29 Mich. 320; *Rice v. Governor*, 19 Minn. 103; *State v. Governor*, 39 Mo. 388; *Inquiries by Governor*, 58 Mo. 369; *State v. Governor*, 1 Dutch. (New Jersey) 331; *Mauran v. Smith*, 8 R. I. 192; *Turnpike Co. v. Brown*, 8 Baxter (67 Tenn.) 490; *Houston Railroad Co. v. Randolph*, 24 Texas 317.

In *Donnelly v. Franklin D. Roosevelt, Governor*, 259 N. Y. 356, the Supreme Court of New York considered the exercise of judicial control over the then Governor Roosevelt:

"While as a general practice arbitrary power has no place in our system of government, judicial authority is clear and well established that in the functioning of the departments of government, executive, legislative, and judicial, the Constitution has enumerated the powers and defined the limitations of each. One cannot encroach upon the other and have the balance of powers preserved. The respondent, as Governor of the State is immune from judicial control in his performance of executive powers. A sphere of duty has been established for the executive, and within that orbit of power the exercise of his judgment and authority is immune from judicial encroachment.

"Courts have no power over his person, and they cannot commit him for a disobedience of judicial process. *For errors, if any, of law or of fact in the proceeding now pending before him, he is responsible, not to the courts, but to the people, and to his own conscience.*"

In *Vicksburg & Meridian R. R. Co. v. Robert Lowry, Governor of Mississippi*, 61 Miss. 102, 48 Am. Rep. 76, the Supreme Court of Mississippi said:

"The consideration that disobedience of the writ may be followed by imprisonment until compliance, is decisive against the propriety of its issuance against the governor in any case. The chief executive power of the State is vested in him. It is his duty to see that the laws are faithfully executed. The power of the State is at his command for this purpose. He may in cases of emergency convene the legislature. He has important functions as part of the law-making power. It would be his duty to employ the power of the State at his command to maintain the rightful

authority of the judiciary and enforce its judgments. May that judiciary imprison him for refusal to obey some order it may make to operate on him as the chief executive of the State? Whence comes this ascendancy of the judiciary over the executive? They are coordinate departments, created alike by the constitution, declared to be distinct; and to be kept separate as to the exercise of the powers confided to each."

See also *High's Extraordinary Legal Remedies*, 3rd Ed. p. 128.

We sincerely hope that this Court will not sound the death knell of our constitutional form of government by allowing the Federal Court system to take unto itself the performance of the official duties of the Governor of a sovereign state by the *mandatory* injunction process or by the threat of impeachment through physical arrest. The foregoing authorities establish, we submit, that the Judiciary neither has nor should exercise such power.

VIII.

THE ISSUANCE OF THE PRELIMINARY INJUNCTION AND THE CONTEMPT JUDGEMENTS BY THE COURT OF APPEALS RESULTED IN THE DECISION OF IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN BUT SHOULD BE DECIDED BY THIS COURT.

We respectfully submit that the true issue which emerges from the numerous actions taken by this Court and by the executive head of the Government of Mississippi is an issue of proper procedure which is es-

sentially based on the constitutional power of each of the actors.

If an action of the executive (in his official capacity, not his personal capacity) creates an intrusion upon an individual right, the only proper procedural and constitutional way to test the intrusion is an original judicial challenge of the executive discretion which produced the conflict. cf. The Three-Judge Court proceedings in *Strutwear Knitting Co. v. Olsen*, 13 F. Supp. 384, and *Sterling v. Constantin*, 287 U. S. 378, 77 L. Ed. 375, 53 S. Ct. 190, where specific and exclusive jurisdiction to *prohibitively* enjoin state action under 28 *USC* 2281 was exercised.

Since discretionary action by the executive arises from the exercise of an equal constitutional authority with the authority of the judicial process, such executive action is not and cannot be a contempt of the judicial process per se. An examination of the executive action under threat of judicial contempt asserts a paramount judicial authority which does not constitutionally exist.

The Federal Judiciary declared Meredith's right to attend the University. As to the school authorities who were properly made parties to this cause, the matter is res judicata. They had their day in court. Their subsequent actions could, in a court having jurisdiction, properly have been challenged as a contempt. However, the independent discretion exercised by the chief executive officer of the State was not an action of contempt for any court's decree. This is true even though such decision amounted to a temporary interruption of the rights Meredith secured as against the College Board.

This action of the executive did not raise an ancillary or a collateral question in the Meredith case. It raised

a *completely independent judicial issue* calling for a judicial determination as to the correctness of the executive decision of the State.

Meredith or the United States should have instituted a judicial proceeding to determine the validity of that action. They created the grave constitutional problems here present when they persuaded the Court of Appeals without notice or a hearing, to require the Governor to answer injunctive and contempt processes of that Court in this cause when his independent executive decision had never been judicially examined in a proper proceeding.

The Court of Appeals repeatedly stated that as between the College Board and Meredith time was of the essence and the quintessence, yet the time necessary for proper determination of the issues in that cause covered more than fifteen months — time for lawyers to gather facts, research and brief the legal questions raised — time for deliberation and calm study and reflection by the Courts. On the contrary, in the proceedings involving the State of Mississippi and her executive officers, the Court of Appeals was rushed headlong past the most basic doctrines of constitutional law in the haste of these parties to secure what was, for the Department of Justice, apparently the quintessence of political expediency. Issues as grave as the arrest of the Chief Executive of a Sovereign State, whose actions questioned were the assertions of that state herself, deserve a more deliberate legal approach. If the Governor was legally wrong, surely there was no conceivable harm of the magnitude which actually resulted, which could have come from a *proper* judicial determination of the rights of Mississippi and her gov-

ernor — rights which even yet have never been properly tested.

As sacred as the decisions of this Court may be in fixing the *rights of the parties* to private litigation before them, such decision can, under our constitutional form of government, be no more sacred than the executive decisions entrusted by the people to their Governor. The Judicial, the Executive and the Legislative branches of our government exist only to serve the people, to do their bidding and protect their rights.

If, in an independent judicial proceeding, the decision made by the executive is reviewed and found to be incorrect, and if after such determination he should persist, then the correct and constitutional remedy is not by mandatory injunction or mandamus or other affirmative writ which attempts to set the determination of the judiciary above the determination of the executive and which could lead to the exact equivalent of impeachment and removal from office. The correct procedure is by way of prohibitory injunction for which such executive cannot be imprisoned.

In the event of the Governor's failure to abide by its proper decision, the Court may als mandatorily enjoin, not him, but, the agencies or forces through which he may seek to accomplish his act of executive discretion.

The Court can use physical force through the form of its marshals. (In the instance of the Court of Appeals this would be the marshals of the Eastern District of Louisiana or the district wherein it sat. 28 *USC*, §547, 713). This is the only force legally appropriate to enforce its decrees which are not laws. cf. 10 *USC*, § 332, 333, in the light of the repeal of 42 *USC* §1993, and "En

forcement of Federal Court Decrees: a 'Recurrence to Fundamental Principles' " by A. J. Schweppe, ABA Journal Vol. 44 page 113. These marshals may assemble a posse comitatus or other appropriate aid, and the executive intrusion may be physically removed, but a governor cannot be arrested and thus unconstitutionally impeached.

The results may be substantially the same, to-wit: the execution of the Court's decree, but strict adherence to proper legal procedure is vital to constitutional principles.

Although he was only a state court judge, our thoughts cannot help but to recur to the words of Judge V. A. Griffith in the case of *State v. McPhail*, 182 Miss. 360, 180 So. 387, wherein he pointed out:

> ". . . it is true that no writ of injunction or mandamus or other judicial remedial writ will run against the Governor or any member of the Legislature, in his official capacity; but whenever they, or any of them, or any other officer acting or assuming to act for the government, puts into action any agency which comes into collision with the private personal or private property rights of any person within the jurisdiction of the state, such personal and property rights of the citizen and their infringements are always subject to inquiry and redress by the courts, as against any unauthorized act by any officer of the state, whatever his character and rank may be, and all appropriate judicial process will be directed to and against his agents or agencies."

It is respectfully submitted that while the prohibitory injunction as to the Governor was improper in the present proceedings, the order with regard to contempt

thereof against him was completely improper in any proceeding, for it not only conditionally required the Governor's arrest, but also included mandatory purge requirements which were beyond the constitutional competence of any court. Neither the Constitution of the United States nor the Constitution of the State of Mississippi has declared any of the three branches of government to be the supreme or controlling branch and no power has been vested even in this Court to remove the executive head of a state. That power has been lodged by the people exclusively in the process of impeachment and nowhere else.

We respectfully submit that no graver constitutional issue has ever faced this Court and, while it is more than understandable that every court demands compliance with its decrees, it is less than constitutional for that compliance to be obtained by the extralawful use of armed forces or by the assertion of a supremacy on the part of the Federal Judiciary, which we, with the greatest possible deference, submit it does not possess.

IX.

THE ISSUANCE OF THE TEMPORARY RESTRAINING ORDERS AND THE PRELIMINARY INJUNCTION ORDER BY THE COURT OF APPEALS RESULTED IN THE DECISION OF IMPORTANT STATE QUESTIONS IN A WAY THAT CONFLICTED WITH APPLICABLE STATE LAW.

This court has long been committed to the constitutional principle that state legislative actions (the equivalent of the actions of the executives of the state in the discharge of their offices) should be interpreted by the court of last resort of the state before they are

called into question by the Federal Judicial System. *Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U. S. 639, 3 L. Ed. 2d 562, 79 S. Ct. 455; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25, 3 L. Ed. 2d 1058, 79 S. Ct. 1070; *Harrison v. NAACP*, 360 U. S. 167, 3 L. Ed. 2d 1152, 79 S. Ct. 1025. Yet, in this case, the Court of Appeals, and not a statutory three-judge court formed under Title 28, §2281 (A. 6) dealt with Mississippi legislative and executive acts and enjoined their enforcement without any such prerequisite state court construction.

The 10th Amendment to the *Constitution of the United States* (A. 1) expressly reserved unto the State of Mississippi the right to control, guide and direct its institutions of higher learning. The Court of Appeals negated state enactments made pursuant to this amendment, assertedly on the basis of prior constructions by this Court of the 14th Amendment to the Constitution of the United States, yet this Court has ruled that in the field of constitutional construction stare decisis is not to be strictly regarded. *Glidden Co. v. Zdanok* ——U. S. ——, 8 L. Ed. 2d 671, 683, 82 S. Ct. 1459.

Not only is the sovereignty of the State of Mississippi at stake in seeking the correction of this action, but indeed the sovereignty of all of the other 49 states composing our Union is likewise at issue. The line of demarkation between state and federal sovereignty should be meticulously regarded, for its disregard would be vitally unconstitutional. *Texas v. White*, 74 U. S. 700, 19 L. Ed. 227, 237; cf. *S. Carolina v. U. S.*, 199 U. S. 437, 50 L. Ed. 261, 26 S. Ct. 110; *New York v. United States*, 326 U. S. 572, 90 L. Ed. 326; 64 S. Ct. 1286; *U. S. v. Detroit*, 355 U. S. 466, 474, 2 L. Ed. 2d 424, 78 S. Ct. 474.

X.

THE PRELIMINARY INJUNCTION WAS SO BROAD, VAGUE, GENERAL AND INDEFINITE AS TO BE IMPROVIDENT AND IMPROPER.

Paragraph 4 of the ordering part of the Preliminary Injunction enjoins the parties thereto from:

> "Interferring with or obstructing by *any means* or in *any manner* the performance of obligations or the enjoyment of rights under this court's order of July 28, 1962 and the order of the U. S. District Court for the Southern District of Mississippi entered September 13, 1962 in this action."

Although there is substantial question as to the breadth of some of the other paragraphs of the order, we respectfully submit that this Paragraph 4 goes so far beyond the bounds of the exactitude and specificity required of injunctions as to constitute a clearly erroneous action on the part of the court.

In the rules prescribed by this court for injunctions issued by District Courts [Rule 65(d), *Federal Rules of Civil Procedure*] every order granting an injunction is required to be specific in its terms and to describe in reasonable detail, and not by reference to the complaint or other docum[redacted] the act or acts sought to be restrained.

This Paragraph 4 is not limited in any way as to what may be enjoined. If Meredith should commit a crime against the laws of the State of Mississippi and openly acknowledge his guilt thereof, would an officer of the State be in contempt of Court for arresting or detaining him? If Meredith should fail his college work, would a Professor instructing a course in which he has

enrolled be required to pass him to avoid contempt? If the laundry at the University doesn't promptly return his clothing correctly laundered, are they interferring with or obstructing his right to attend school? Perhaps these suggestions may be considered far-fetched, yet under the strict wording of Paragraph 4 each of them could constitute a contempt of the court's order (and this would be without regard to the wilfulness or intention of the actor to commit contempt, insofar as a charge of civil contempt might be concerned).

An act as solemn and as forceful as an injunction deserves more meticulous detail as to what precisely is encompassed. Compare the statute struck down as overly-vague in *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066, 57 S. Ct. 732.

XI.

THE CIVIL CONTEMPT PROCEEDINGS AND ORDERS BY THE COURT OF APPEALS WERE IMPROPER.

a.

The United States Should Not Have Been Permitted to Intervene In a Private Law Suit to Invoke Court Proceedings In Civil Contempt.

Civil contempt proceedings are exclusively remedial and are designed only to produce compliance for the benefit of the complainant. *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 55 L. Ed. 797, 31 S. Ct. 492. The order granting to the United States leave to intervene here is almost identical with the order of the District Court in *Bush v. Orleans Parish School Board*, 191 F. Supp. 871; and the Court there pointed out that it was definitely the function of such an Amicus to "*vindicate* the authority of the court."

Vindication of the court's authority is a public purpose, and is not and cannot be made to be an object of civil contempt. When the court permitted the Government to institute *civil* contempt proceedings, it acted contrary to the remedial purpose of civil contempt. It should also be noted that at no time during these proceedings was the complaining party unable or unwilling to promptly institute proceedings to secure the enforcement of the court's order for his own purposes. We submit that the civil contempt proceedings by the Government were not only improper but also unnecessary.

b.

A Contempt Judgment Cannot Impose Both Fine and Imprisonment For a Single Course of Action Alleged to Constitute Civil Contempt.

In *Estes v. Potter* (CA 5) 483 F. 2d 865, cert. den. 340 U. S. 920, 95 L. Ed. 664, 71 S. Ct. 356, the Court of Appeals for the Fifth Circuit was faced with a purely civil contempt matter and pointed out that §401 of Title 18, *USC* (A. 2), governed civil contempt and would not permit the punishment of civil contempt by both fine and imprisonment for the same offense. This same reasoning was followed in an excellent and scholarly opinion by the U. S. District Court in Montana in the case of *U. S. v. Montgomery*, 155 F. Supp. 633.

Although §401 is a part of the criminal code, it has been clearly accepted by the Court of Appeals for the Fifth Circuit as applicable to the power of the Court on civil as well as criminal contempt.

The correctness of this rule is indicated by a comparison with the criminal contempt punishments defined in §402 of the same title (A. 2), which permit

the imposition of a fine up to $1,000.00 or imprisonment up to 6 months or both in cases of criminal contempt where the act done is also a criminal offense. This question of the coverage of §401 was alluded to by Mr. Justice Douglas in *Penfield Co. v. Securities & Exchange Commission*, 330 U. S. 585, 91 L. Ed. 1117, 67 S. Ct. 918; although the opinion gave no answer to the question posed since it did not bear directly upon the point then in issue. If §401 does not relate to civil as well as criminal contempts then the Congress has put a premium or extra protection on the commission of criminal contempt even if the criminal act is also a violation of a state or federal criminal statute. The legislative history of Section 401 does not indicate any intent to differentiate between civil and criminal contempt. The statute was intended to cover all contempt proceedings. *7 Cong. Deb. 21st Cong. 2d Sess., Cols.* 560-561. See also 37 Harvard Law Review 1028.

We respectfully submit that the orders of the Court of Appeals imposing the civil contempt punishment of both fine and imprisonment for a single course of conduct (A. 38) are in excess of the court's powers in civil contempt and are therefore erroneous.

c.

No Final and Unremittable Fine Other Than a Compensatory Fine Payable to the Complaining Party May Be Assessed in a Civil Contempt Judgment.

We realize that the cases of *Doyle v. London Guaranty & Accident Ins. Co.*, 204 U. S. 599, 51 L. Ed. 641, 27 S. Ct. 313, and *U. S. v. United Mine Workers*, 330 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677, are contrary to this proposition. Nevertheless, we believe that it is improper

for such a fine to be assessed in civil contempt and would respectfully show unto the court the following reasoning in support of our position.

In the case of *Cliett v. Hammonds* (CA 5) 305 F. 2d 565, the court was treating with the imposition of a contingent jail sentence as a civil contempt punishment. Speaking through Judge Brown at Page 569, the court used this language:

> "Thus, with respect to the very element of the jail sentence itself, a specific time (30 days) was allowed in which she could purge herself. Had she done so within that period, the confinement was expressly remitted entirely. Thus far the objective of the judgment was to coerce the recalcitrant party into compliance with the Court's decrees. That is the mark of civil contempt. Coca-Cola Co. v. Feulner, S. D. Tex., 1934, 7 F. Supp. 364. The sanction imposed by the judgment is commonly referred to as remedial. *But after the expiration of that 30-day period without compliance, the 90-day jail sentence automatically became unconditional in execution and duration. No provision was made for release from imprisonment once the 90-day confinement commenced. This was unrelated to contemporary compliance with the Court's decree.*" (Emphasis added).

Precisely the same process of reasoning is fully applicable to an unremittable but conditional fine, for after the expiration of the four-day and three-day periods which Governor Barnett and Lieutenant Governor Johnson, respectively, were given to bring about compliance, the imposition of daily fines was absolute and unconditional both as to collection and remission. No provision was made for the remittitur of any such fine at any time or by any action. In the words of Judge

Brown, "This was unrelated to contemporary compliance with the Court's decree."

d.

A Civil Contempt Fine Cannot Be Imposed In The Absence of a Showing of Damages By the Party to Whom the Fine is Payable.

Petitioners respectfully submit that a civil contempt fine can not be paid to the United States in any proceeding wherein the United States is not a party-complainant in the proceeding. In *Parker v. U. S.* (CA 1), 153 F. 2d 66, 163 A.L.R. 379, the First Circuit stated:

> "In a civil contempt proceeding a punitive fine cannot be imposed on the respondent, and where fine is imposed, it must not exceed the actual loss to the complainant caused by the respondent's violation of the decree in the main cause."

Nowhere in the record of these proceedings did the United States or the complainant even make an attempt to make proof of any pecuniary loss or damage suffered because of the disobedience (if any there was) of an order or decree of the court made for his or its benefit. In *Gompers v. Bucks Stove & Range Co.*, supra, this court said (221 U. S. 451):

> "But, as we have been shown, this was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complaint."

See also *McComb v. Jacksonville Paper Co.* 336 U. S. 187, 93 L. Ed. 599, 69 S. Ct. 497. To the same effect, requiring proof of damages, are the cases of *Yanish v. Barber* (CA 9) 232 F. 2d 939, 944; *United States v. Onan* (CA 8) 190 F. 2d 1, Cert. den. 342 U. S. 869, 96 L. Ed. 654, 72 S. Ct. 112; and *Boylan v. Detrio* (CA 5) 187 F. 2d 375.

See also the District Court cases of *Champion Spark Plug Co. v. Reich*, 98 F. Supp. 242, and *Babee-Tenda Corp. v. Scharco Manufacturing Co.*, 156 F. Supp. 582.

In the case of *Norstrom v. Wahl* (CA 7), 41 F. 2d 910, the Court imposed a fine of $1,000.00 upon the defendant in a contempt proceeding ordering $500.00 thereof paid to the United States and $500.00 paid to the complaining party. On a review, the Court of Appeals, at page 912, stated:

> "It is important to classify the proceeding here — whether for civil or criminal contempt, or both — *since the order for payment to the United States of part of the fine imposed can be supported only in a proceeding for criminal contempt*, and for payment of part to the plaintiff only in one for a civil contempt."

In holding a contempt order to be one of criminal contempt, this court in *Nye v. U. S.*, 313 U. S. 33, 85 L. Ed. 1172, 61 S. Ct. 810, stated:

> "The order imposes unconditional fines payable to the United States. *It awards no relief to a private suitor.*"

cf. *McCrone v. U. S.*, 307 U. S. 61, 83 L. Ed. 1108, 59 S. Ct. 685, where this court said (307 U. S. 64):

> "While particular acts do not always readily lend themselves to classification as civil or criminal contempts, a contempt is considered civil when the punishment is wholly remedial, *serves only the purposes of the complainant*, and is not intended as a deterrent to offenses against the public."

Our research discloses no case in which a fine payable to the United States of America has been imposed in a civil contempt action in which the United States was not the party-complainant. The imposition of such a fine in private litigation is contrary to the rationale of all decided cases and to the purposes of civil contempt. We respectfully submit that the action of the United States Court of Appeals in this regard was erroneous and should be reversed.

c.

An Order Adjudging Civil Contempt Cannot Impose Purge Terms Which Broaden the Scope of the Injunction On Which the Contempt Citation Was Based.

Conceding for the sake of this argument only that the Temporary Restraining Orders entered against Governor Barnett and Lieutenant Governor Johnson had some validity, and conceding again for the sake of argument only that any actions were done which amounted to contempt of such orders, still and nevertheless the contempt orders themselves contained invalid and extra-legal purge terms which improperly went beyond the terms of the Temporary Restraining Orders on which such contempt orders were supposedly based. The restraining orders were *prohibitory* in their terms and they enjoined the doing of certain enumerated acts relating to the attendance of Meredith at the University of Mississippi.

The purge requirements of the judgments of civil contempt were *mandatory*. They did not stop at re-

quiring compliance with the restraining order but went further and mandated these executive officials to issue future orders to officers under their jurisdiction and command to perform mandatory acts which were actually in excess of the statutory authority of the Governor and the Lieutenant Governor, and which were not in any way encompassed within the original temporary restraining order.

This court made the error of such purge requirements plain in *Terminal Railroad Assn. of St. Louis, et al v. United States of America, et al*, 226 U. S. 17, 69 L. Ed. 150, 45 S. Ct. 5 where it stated:

> "In contempt proceedings for its enforcement, a decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree. (Authorities cited)."

This case has been followed in several of the Circuits, e. g. *Star Bedding Co. v. Englander Co.*, (CA 8) 239 F. 2d 537. See also *Cyclopedia of Federal Procedure*, 3rd Edition, Vol. 15, Contempt, §87.25.

f.

The Civil Contempt Judgments Against the Governor and the Lieutenant Governor Are Now Moot and Should Be Dismissed.

In III above, we have attempted to demonstrate that the last vestige of possible jurisdiction of the Court of Appeals expired with the terms of its own

injunction order on which it based its *ancillary* jurisdictional claim. Assuming *arguendo* that this was not so, at the time that the Temporary Restraining Order issued or the time that the Preliminary Injunction issued, we nevertheless submit that as of the date of this Petition for Certiorari that this entire matter as to civil contempt by the Governor or the Lieutenant Governor is moot.

As stated above, civil contempt serves only a remedial purpose, and when that which the original controversy sought to accomplish comes to pass, civil contempt becomes moot. Meredith was admitted to the University on October 1, 1962. Since that date he has been continuously enrolled as a student at the University and has been attending such classes as he cared to attend since that time. No activity of the Governor or the Lieutenant Governor has been shown to have interfered with or obstructed this attendance in any way. The matter is now moot as to civil contempt on any possible basis and the so called Judgments of Civil Contempt now pending against these executive officers should be dismissed. *Gompers v. Buck Stove & Range Co.*, supra, *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U. S. 448, 76 L. Ed. 389, 52 S. Ct. 238. cf. *Brownlow v. Schwartz*, 261 U. S. 216, 67 L. Ed. 620, 43 S. Ct. 263.

CONCLUSION

Petitioners pray that a Writ of Certiorari issue to review the judgments and orders of the U. S. Court of Appeals for the Fifth Circuit and that upon the granting of such writ that each and all of the orders involved be set aside and held for naught and that this matter be remanded to the U. S. District Court, Southern District of Mississippi for the entry of such orders

or for the conduct of such further proceedings as this court may deem proper in the premises.

Respectfully submitted,

THE STATE OF MISSISSIPPI, et al, Petitioners,

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By /s/
CHARLES CLARK
Counsel for Petitioners

CERTIFICATE OF SERVICE

I, CHARLES CLARK, one of the attorneys for petitioners herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the date shown below I served the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT on James H. Meredith, Respondent, by mailing true copies thereof to: Constance B. Motley, Esq., 10 Columbus Circle, New York 19, New York, airmail postage prepaid; to R. Jess Brown, Esq., 1105½ Washington Street, Vicksburg, Mississippi, by first class mail postage prepaid (the distance being less than 500 miles), the attorneys of record for said respondent; and on the United States, Amicus Curiae, by mailing true copies thereof to: Burke Marshall, Esq., Assistant Attorney General; St. John Barrett, Esq.; and John Doar, Esq., Attorneys, Department of Justice, Washington, D. C., airmail postage prepaid, the attorneys of record for said Amicus Curiae.

DATED this 12th day of December, 1962.

/s/

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APPENDIX

The Constitution of the United States

Article III, §2, *Clause* 2:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Article IV, §4:

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

United States Code

Title 18:

§401. A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701.

§402. *Contempts constituting crimes.*

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law. June 25, 1948, c. 645, 62 Stat. 701, amended May 24, 1949, c. 139, §8(c), 63 Stat. 90.

Title 28:

§547. *Powers and duties generally; supervision by Attorney General.*

(a) The United States marshal of each district shall be the marshal of the district court and of the court of appeals when sitting in his district, and of the Customs Court holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York, and may, in the discretion of the respective courts, be required to attend any session of court.

(b) He shall execute all lawful writs, process and orders issued under authority of the United States, and command all necessary assistance to execute his duties.

(c) The Attorney General shall supervise and direct marshals in the performance of public duties and accounting for public moneys. Each marshal shall report his official proceedings, receipts and disbursements and the condition of his office as the Attorney General directs.

§713. *Criers, bailiffs and messengers.*

(d) The United States marshal of the district in which a court of appeals is sitting or in which a circuit judge is present in chambers, may, with the approval of the court or judge, employ necessary bailiffs. Such bailiffs shall attend the court, preserve order, and perform such other necessary duties as the court, judge or marshal may direct. They shall receive the same compensation as bailiffs employed for the district courts. June 25, 1948, c. 646, 62 Stat. 920, as amended May 24, 1949, c. 139, §75, 63 Stat. 100.

§1254. *Courts of appeals; certiorari; appeal; certified questions.*

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

§1291. *Final decisions of district courts.*

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. As amended Oct. 31, 1951, c. 655, §48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, §12(e), 72 Stat. 348.

§1345. *United States as plaintiff.*

Except as otherwise provided by act of congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by act of congress.

§1391. *Venue generally.*

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law.

§1404. *Change of venue.*

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

§2071. *Rule-making power generally.*

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court. June 25, 1948, c. 646, 62 Stat. 961; May 24, 1949, c. 139, §102, 63 Stat. 104.

§2101. *Supreme Court; time for appeal or certiorari; docketing; stay.*

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the

Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

§2281. *Injunction against enforcement of State statute; three-judge court required.*

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.

§2403. *Intervention by United States; constitutional question.*

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality. June 25, 1948, c. 646, 62 Stat. 971.

Title 42:

§1983. *Civil action for deprivation of rights.*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Rules of the
U. S. Court of Appeals
For the Fifth Circuit.

Rule 8. *Practice*

Where not fixed by statute or rule the practice shall be that heretofore customarily followed in this court.

Rule 9. *Process*

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

Rule 10. *Appeals in Civil Actions*

1. Federal Rules of Civil Procedure, adopted by the Supreme Court pursuant to Act of June 19, 1934, as amended Oct. 1, 1947, Nos. 46, 50, 51, 73, 74, 75, and 76, are adopted as rules of this court in cases to which they apply.

Rule 4. *Process*

(f) *Territorial Limits of Effective Service.* All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. A subpoena may be served within the territorial limits provided in Rule 45.

Rule 24. *Intervention*

(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the actions; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof. As amended Dec. 27, 1946, eff. March 19, 1948.

(b) *Permissive Intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pur-

suant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. As amended Dec. 27, 1946, eff. March 19, 1948.

(c) *Procedure.* A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, USC, §2403. As amended Dec. 29, 1948, eff. Oct. 20, 1949.

Mississippi Constitution of 1890

Article 4: *Legislative Department*

§50. The Governor and all other civil officers of this state, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office.

Article 5: *Executive*

§116. The chief executive power of this state shall be vested in a governor, who shall hold his office for four years, and who shall be ineligible as his immediate successor in office.

§119. The governor shall be commander-in-chief of the army and navy of the state, and of the militia, except when they shall be called into the service of the United States.

§123. The governor shall see that the laws are faithfully executed.

Article 9: *Militia*

§217. The governor shall be commander-in-chief of the militia, except when it is called into the service of the United States, and shall have power to call forth the militia to execute the laws, repel invasion and to suppress riots and insurrections.

Mississippi Code of 1942

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§3975. *Powers generally.*

In addition to the powers conferred and duties imposed on the governor by the constitution and by the laws as elsewhere provided, he shall have the powers and perform the duties following, viz:

(a) He is the supreme executive officer of the state.

(b) He is the commander-in-chief of the militia of the state, and may call out the militia to execute the laws, to suppress insurrections or riots, and to repel invasions.

(c) He shall see that the laws are faithfully executed.

(d) He is to supervise the official conduct of all executive and ministerial officers.

(e) He is to see that all offices are filled and the duties thereof performed, or, in default thereof,

apply such remedy as the law allows; and if the remedy be imperfect he shall acquaint the legislature therewith at its next session.

(f) He shall make appointments and fill vacancies as prescribed by law.

(g) Whenever any suit or legal proceeding is pending which affects the title of the state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and protect its interest.

(h) He may require the attorney general, or disrtict attorney of any district, to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state under the laws thereof.

(i) He may require the attorney general to aid any district attorney in the discharge of his duties.

(j) He may offer rewards, not exceeding two hundred dollars, for escaped insane persons who are dangerous, and such other rewards as are authorized by law.

(k) He may require any officer or board to make special reports to him upon demand in writing.

(l) He shall transact all necessary business with state officers, shall require them to be present at their respective offices at all reasonable business hours, and may require information, in writing, from any such officer relating to the duties of his office.

(m) When deemed advisable, upon proceedings for the arrest of fugitives from justice in this state

from other states or countries, he may commission a special officer to arrest such fugitive in any part of the state.

(n) He may bring any proper suit affecting the general public interests in his own name for the State of Mississippi, if after first requesting the proper officers so to do, the said officer shall refuse or neglect to do the same.

§3978. *Business with the United States government.*

The governor shall transact all the business of the state, civil and military, with the United States government, or with any other state or territory, except in cases otherwise specially provided by law.

§6724. *Powers and duties of the board.*

(a) The board of trustees of state institutions of higher learning shall succeed to and continue to exercise control of all records, books, papers, equipment, and supplies, and all lands, buildings, and other real and personal property now or hereafter belonging to or assigned to the use and benefit of the statutory board of trustees now supervising and controlling the institutions of higher learning heretofore named in this act and shall have and exercise control of the use, distribution and disbursement of all funds, appropriations and taxes, now and hereafter in possession, levied and collected, received, or appropriated for the use, benefit, support, and maintenance or capital outlay expenditures of the institutions of higher learning, including the authorization of employees to sign vouchers for the disbursement of funds for the various institutions, except where otherwise specifically provided by law.

(Section (b) was amended by HB 403, Laws of 1962 see infra)

(c) The trustees shall exercise all the powers and prerogatives conferred upon them under the laws establishing and providing for the operation of the several institutions herein specified; they shall adopt such by-laws and regulations from time to time as they deem expedient for the proper supervision and control of the several institutions of higher learning, in so far as such by-laws and regulations are not repugnant to the constitution and laws, and not inconsistent with the object for which these institutions were established; they shall have power and authority to prescribe rules and regulations for policing the campuses and all buildings of the respective institutions, to authorize the arrest of all persons violating on any campus any criminal law of the state, and to have such law violators turned over to the civil authorities.

§6726.7. *Traffic regulations for campus and streets — enforcement — penalty for violation.*

1. The Board of Trustees of State Institutions of Higher Learning is hereby authorized and empowered to enact traffic rules and regulations for the control, direction, parking and general regulation of traffic and automobiles on the campus and streets of any state institution of higher learning under the supervision of such board.

2. The traffic officers duly appointed by the president of any state institution of higher learning, or any peace officer or highway patrolman of this state, are vested with the powers and authority to perform all duties incident to enforcing such rules and regulations, including the arrest of violators.

3. Violation of any rules or regulations promulgated hereunder shall constitute a misdemeanor, and any person charged with such violation in the Justice of the Peace Court of the district in which violation occurred, and any person convicted of a violation of any such rule or regulation may be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

4. Any rules and regulations promulgated hereunder shall become effective only after notice of the enactment of same has been published in three consecutive weekly issues of the college newspaper and in a newspaper published and having general circulation in the County or municipality where the institution to which same pertain is located, and such notice shall state where the full text of such rules and regulations may be found on file. And in addition, such rules and regulations shall be posted on five bulletin boards at each such institution for a period of four weeks after their promulgation.

§8082. *Powers and duties of patrol.*

(a) The powers and duties of the highway safety patrol shall be, in addition to all others prescribed by law, as follows:

(1) To enforce all of the traffic laws, rules and regulations of the state of Mississippi upon all highways of the state highway system and the rights-of-way of such highways; provided, however, that if any person commits an offense upon the state highway system and be pursued by a member of the highway safety patrol, such patrolman may pursue and apprehend such offender upon any of

the highways or public roads of this state, or to any other place to which such offender may flee.

(2) To enforce all rules and regulations of the commissioner promulgated pursuant to legal authority.

(3) When so directed by the governor, to enforce any of the laws of this state upon any of the highways or public roads thereof.

(b) The patrolmen of the highway safety patrol shall not have the power, and shall never be used or ordered, to perform in the duties or functions properly devolving upon the organized militia of the state; nor shall the patrol ever be used in any strike, walkout, lockout, or other labor controversy or dispute; nor shall they ever displace or act as deputy, or exercise the authority, of the peace officers of this state. All fines collected under the authority of this act, or any other laws enforced by the highway safety patrol, shall be paid by the officer collecting same into the county treasury, unless it be otherwise provided by law. Patrolmen shall have no interest in any costs in the prosecution of any case through any court; nor shall any patrolman receive any fee as a witness in any court upon arrests made by such patrolmen, and where charges have been preferred against alleged violators, shall be approved by the regularly constituted peace officers in the manner and method provided by law.

§8576. *National Guard—how ordered out.*

When the state is threatened with invasion, insurrection, flood, or other catastrophe, or when there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the state, or

imminent danger thereof, and if in the opinion of the governor, the civil authorities are unable to repel or suppress the same, or if the sheriff or judge of the circuit court of any county, call upon the governor for the aid of the troops, it shall be the duty of the governor to order out the Mississippi National Guard, or such part thereof as he may deem necessary for the purpose. Provided, that if the troops be ordered into any county in the aid of civil authorities at the request of the sheriff or the judge of the circuit court of said county, the governor shall be the sole judge of the number of troops to be ordered out on such service, and that the cost of such service shall be borne by the state.

House Bill 403

Regular Legislative Session of 1962

Section 3.

That Section 8, chapter 262, laws of 1944, as amended by Section 1, chapter 291, laws of 1960, appearing in section 6724, Mississippi Code of 1942, be amended to read as follows:

Section 8. The board shall have general supervision of the affairs of all the institutions of higher learning; the departments and the schools; the power in their discretion to determine who shall be privileged to enter, to remain in, or to graduate therefrom; the conduct of libraries and laboratories; the care of dormitories, buildings, and grounds; the business methods and arrangement of accounts and records; the organization of the administrative plan of each institution; and all other matters incident to the proper functioning of the institutions. The board shall have the authority to establish minimum standards of achievement as a prerequisite for entrance into any of the institutions under its jurisdic-

tion, which standards need not be uniform between the various institutions and may be based upon such criteria as the board may establish.

Senate Bill 1710

Regular Legislative Session of 1962

Section 1. Section 6706, Mississippi Code of 1942, as amended by Section 1, Chapter 315, Laws of 1946, is amended to read as follows:

6706. *Police of university and college grounds.* Any act, which, if committed within the limits of a city, town or village, or in any public place, would be a violation of the general laws of this state, shall be criminal and punishable if done on the campus, grounds or roads of any of the state institutions of higher learning;* and the peace officers duly appointed by the board of trustees of state institutions of higher learning are vested with the powers and subjected to the duties of a constable for the purpose of preventing and punishing all violations of law on university or college grounds, and for preserving order and decorum thereon.

(*This section formerly related to the University of Mississippi alone.)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 19475

JAMES H. MEREDITH ..... Appellant

vs.

CHARLES DICKSON FAIR, et al., ... Appellees

ORDER DESIGNATING UNITED STATES OF AMERICA AS AMICUS CURIAE

It appearing from the application of the United States, filed this day, that the interest of the United States in the due administration of justice and the integrity of the processes of its courts should be represented in these proceedings,

IT IS ORDERED that the United States be designated and authorized to appear and participate as *amicus curiae* in all proceedings in this action before this Court and by reason of the mandates and orders of this Court of July 27, 28, 1962, and subsequently thereto, also before the District Court for the Southern District of Mississippi to accord each court the benefit of its views and recommendations, with the right to submit pleadings, evidence, arguments and briefs and to initiate such further proceedings, including proceedings for injunctive relief and proceedings for contempt of court, as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

The marshal is directed to serve a copy of this order upon each of the parties to this action through their attorneys.

September 18, 1962

s/ JOHN R. BROWN
Circuit Judge

s/ JOHN MINOR WISDOM
Circuit Judge

s/ GRIFFIN B. BELL
Circuit Judge

ORDER

This matter is now before this Court on Petitions for Orders supplementing this Court's Order of July 28, 1962, to (1) restrain the enforcement of S.B. 1501 enacted by the State of Mississippi on September 20, 1962; (2) restrain any compliance with or enforcement of the injunction issued by the Chancery Court of Jones County, Mississippi, dated September 19, 1962, which purports to restrain the petitioners and others from taking any steps to enroll James Meredith as a student in the University of Mississippi; (3) restrain the arrest of James Meredith on a conviction had in the Justice of the Peace Court in Jackson, Mississippi, on September 20, 1962, or any other person, including federal officials, for the purpose of interfering with the enrollment of James Meredith to the University of Mississippi pursuant to this Court's order.

It appearing that S.B. 1501; the aforesaid injunction issued by the State Court and the conviction of James Meredith each constitutes an interference with and obstruction of this Court's injunction of July 28, 1962.

Subject to the further orders of this Court, IT IS ORDERED that the appellees-respondents, their agents, employees and persons acting in concert with them or persons having actual notice of this order, including law enforcement and public officials in Mississippi, State, County and Municipal, are enjoined and restrained from

(1) enforcing or taking any steps whatever to enforce the provisions of S.B. 1501 against James Meredith, or any other persons, including federal officials in connection with the admission and continued attendance at the University of Mississippi of James Meredith.

(2) taking any steps to effectuate the conviction and sentence on September 20, 1962, in the Justice of the Peace Court in Jackson, Mississippi, of James Meredith for false voter registration, including arresting him or causing him to be arrested; or arresting him or any other persons including federal officials or taking or refraining from taking any other action which has the purpose or effect of interfering with the enrollment of James Meredith as a student in the University of Mississippi or his continued attendance at the University.

(3) taking or refraining from taking any action to comply with or to enforce the injunction issued by the Chancery Court of Jones County, Mississippi, on September 19, 1962, in the case of A. L. Meadors, et al, vs. James Meredith, et al, or any other acts which would have the purpose or effect of interfering with the enrollment and continued attendance of James Meredith as a student at the University of Mississippi.

(4) This order is not intended to limit the authority of the District Court to proceed with respect to the matters referred to in paragraphs (1) and (2) of this order.

ORDERED this the 20th day of September 1962.

/s/ JOHN R. BROWN
U. S. CIRCUIT JUDGE

/s/ JOHN MINOR WISDOM
U. S. CIRCUIT JUDGE

/s/ GRIFFIN B. BELL
U. S. CIRCUIT JUDGE

ORDER REQUIRING CHARLES DICKSON FAIR, THOMAS JEFFERSON TUBB, ROBERT BRUCE SMITH, II, HARRY GORDON CARPENTER, TALLY D. RIDDELL, JAMES NAPOLEON LIPSCOMB, DR. VERNER SMITH HOLMES, S. R. EVANS, WILLIAM ORLANDO STONE, MALCOLM METTE ROBERTS, IRA LAMAR MORGAN, EDGAR RAY IZARD, and LEON LOWERY, to show CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT.

This Court having entered an order on July 28, 1962, requiring Charles Dickson Fair, Thomas Jefferson Tubb, Robert Bruce Smith, II, Harry Gordon Carpenter, Tally D. Riddell, James Napoleon Lipscomb, Dr. Verner Smith Holmes, S. R. Evans, William Orlando Stone, Malcolm Mette Roberts, Ira Lamar Morgan, Edgar Ray Izard, and Leon Lowery to admit the plaintiff, James H. Meredith, to the University of Mississippi, under his applications for admission theretofore filed, prohibiting them from any act of discrimination relating to his admission, and requiring them to promptly evaluate and approve his credits without discrimination and on a reasonable basis in keeping with the standards applicable to transfers to the University, and

It appearing from the application of the United States, *amicus curiae*, filed this day that each of the defendants

above named has failed and refused to comply with the terms of this Court's order of July 28, 1962, and are presently persisting in such failure and refusal,

IT IS ORDERED that Charles Dickson Fair, Thomas Jefferson Tubb, Robert Bruce Smith, II, Harry Gordon Carpenter, Tally D. Riddell, James Napoleon Lipscomb, Dr. Verner Smith Holmes, S. B. Evans, William Orlando Stone, Malcolm Mette Roberts, Ira Lamar Morgan, Edgar Ray Izard, and Leon Lowery appear personally before this Court on September 24, 1962, at 11:00 a.m. o'clock in the Courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, to show cause, if any they have, why they should not be held in civil contempt.

The Court being advised that the District Court for the Southern District of Mississippi has ordered Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis to show cause why they should not be held in contempt of an order entered by that Court on September 13, 1962, that their acts and conduct alleged to constitute the contempt are the same as those alleged by the United States in its application to this Court, and that a hearing on the alleged contempt is to be held in the District Court today, the application of the United States as to Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis is DENIED.

Entered at Hattiesburg, Mississippi, this 21st day of September, 1962.

/s/ JOHN R. BROWN
Circuit Judge
/s/ JOHN MINOR WISDOM
Circuit Judge
/s/ GRIFFIN B. BELL
Circuit Judge

ORDER

Appellant has moved this Court for an order directing each of the appellees to show cause why they should not be adjudged in contempt of this Court's order of July 28, 1962. On consideration of that motion, presented to this Court on this the 22nd day of September 1962, it is now,

ORDERED that the appellees, Charles Dickson Fair, President of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Louisville, Mississippi; Euclid Ray Jobe, Executive Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Jackson, Mississippi; Edgar Ray Izard, Hazlehurst, Mississippi; Leon Lowrey, Olive Branch, Mississippi; Ira Lamar Morgan, Oxford, Mississippi; Malcolm Mette Roberts, Hattiesburg, Mississippi; William Orlando Stone, Jackson, Mississippi; S. R. Evans, Greenwood, Mississippi; Verner Smith Holmes, McComb, Mississippi; James Napoleon Lipscomb, Macon, Mississippi; Tally D. Riddell, Quitman, Mississippi; Harry Gordon Carpenter, Rolling Fork, Mississippi; Robert Bruce Smith, II, Ripley, Mississippi and Thomas Jefferson Tubb, West Point, Mississippi, Members of the Board of Trustees of State Institutions of Higher Learning; James Davis Williams, Chancellor of the University of Mississippi, Oxford, Mississippi; Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, Oxford, Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, Oxford, Mississippi, be, and they hereby are, required to show cause, if they have any, before this Court in the City of New Orleans, Old Post Office Building, on the 24th day of September 1962 at 11 O'Clock, ... A.M. in the forenoon of that day why

they should not be adjudged in contempt of this court's order of July 28, 1962.

/s/ JOHN R. BROWN, (JMW)
United States Circuit Judge

/s/ JOHN MINOR WISDOM
United States Circuit Judge

/s/ GRIFFIN B. BELL, (JMW)
United States Circuit Judge

Signed September 22, 1962

ORDER REQUIRING BOARD OF TRUSTEES TO TAKE CERTAIN ACTIONS

BY THE COURT (en banc):—

This cause coming on to be heard on this date the Court proceeded to hear the testimony and to receive the evidence offered by the parties to this proceeding and to hear argument of counsel, whereupon the President of the Board of Trustees of Higher Learning announced in open Court on behalf of himself and twelve Members of the Board that the Board was now ready and willing to fully perform all things ordered and directed by the former orders of this Court and Board Member, Tally B. Riddell, Esquire, through his counsel, announced that he would comply with the Court's orders as soon as he was physically able to do so; and the Registrar of the University of Mississippi having announced in open Court that he would be available in Jackson, Mississippi not later than 1:00 P. M. on September 25, 1962, for the purpose of registering and admitting as a student of the University of Mississippi James H. Meredith in accordance with the orders of this Court, and all of said parties having requested the Court to inform them of the things

to be done and the action to be performed in compliance with the orders of the Court, it is therefore ORDERED:

That the respondents shall fully and completely comply with all of the terms of the order of this Court dated July 28, 1962, including, but not limited to, the following:

(a) Revoke and rescind the action of the Board taken on September 4, 1962, relieving certain named University Officials of authority as to the registration and admission of appellant, James H. Meredith, and taking the said responsibilities and authority unto themselves as a Board of Trustees.

(b) Revoke and rescind the action of the Board taken on September 20, 1962, appointing Ross R. Barnett, the Governor of the State of Mississippi, as the agent of the Board to act upon all matters pertaining to the registration and admission of James H. Meredith.

(c) Prepare and thereafter without delay send to all employees on the campus of the University notification that the orders of this Court are to be complied with in connection with the registration, admission and attendance of James H. Meredith as a student in the University.

(d) Instruct James Davis Williams, Chancellor, Arthur Beverly Lewis, Dean of the College of Liberal Arts, and Robert Byron Ellis, Registrar of the University, to register and receive James H. Meredith for actual admission to, and continued attendance thereafter at, the University in accordance with the order of this Court of July 28, 1962.

(e) Registrar, Ellis, shall be available at Jackson, Mississippi at the office of the defendant, Board of Trustees, from 1:00 P. M. to 4:00 P. M., September 25,

1962 for the purpose of the registration of the said James H. Meredith and his actual admission to, and the continued attendance thereafter at, the University on the same basis as other students and if the said James H. Meredith does not appear during said hours the said Registrar shall continue to be available at his office at the University of Mississippi during usual business hours for the purpose of effecting such registration, admission and attendance.

Each respondent is directed to notify this Court either directly or through Charles Clarke, Esquire, not later than 4:00 P. M., September 25, 1962, as to the actions he has taken to comply with the foregoing order.
ENTER:

Dated: September 24, 1962.

TEMPORARY RESTRAINING ORDER

This Court having entered its order in this action on July 28, 1962, and the District Court for the Southern District of Mississippi having entered a similar order on September 13, 1962, pursuant to the mandate of this Court, requiring the defendant officials of the University of Mississippi and the defendant members of the Board of Trustees of the Institutions of Higher Learning of the State of Mississippi to enroll James Howard Meredith as a student in the University of Mississippi, and

It appearing from the verified petition of the United States, *Amicus Curiae* herein, that the State of Mississippi, Ross R. Barnett, Governor of Mississippi, Joe T. Patterson, Attorney General of Mississippi, T. B. Birdsong, Commissioner of Public Safety of Mississippi, Paul G. Alexander, District Attorney of Hinds County,

William R. Lamb, District Attorney of Lafayette County, J. Robert Gilfoy, Sheriff of Hinds County, J. W. Ford, Sheriff of Lafayette County, William D. Rayfield, Chief of Police of the City of Jackson, James D. Jones, Chief of Police of the City of Oxford, Walton Smith, Constable of the City of Oxford, the classes consisting of all district attorneys in Mississippi, the classes consisting of the sheriffs of all counties in Mississippi, the classes consisting of all chiefs of police in Mississippi, and the classes consisting of all constables and town officials in Mississippi, threaten to implement and enforce, unless restrained by order of this Court, the provisions of a Resolution of Interposition adopted by the Mississippi Legislature, the provisions of Section 4065.3 of the Mississippi Code, and a Proclamation of Ross R. Barnett invoking the doctrine of interposition with respect to the enforcement of the orders of this Court in this case; that Paul G. Alexander has instituted two criminal prosecutions against James Howard Meredith on account of the efforts of James Howard Meredith to enroll in the University of Mississippi pursuant to the orders of this Court; that A. L. Meador, Sr., and the class of persons he represents, on September 19, 1962, instituted in the Chancery Court of the Second Judicial District of Jones County, Mississippi, a civil action against James Howard Meredith to prevent him from attending the University of Mississippi; that on September 20, 1962, James Howard Meredith, while seeking to enroll at the University of Mississippi in Oxford, Mississippi, pursuant to the orders of this Court, was served with a writ of injunction issued by the Chancery Court of Lafayette County, Mississippi, at the instance of Ross R. Barnett, enjoining James Howard Meredith from applying to or attending the University of Mississippi; that on Septem-

ber 20, 1962 the State of Mississippi enacted Senate Bill 1501, the effect of which is to punish James Howard Meredith should he seek enrollment in the University of Mississippi; that the effect of the conduct of the defendants herein named in implementing the policy of the State of Mississippi as proclaimed by Ross R. Barnett will necessarily be to prevent the carrying out of the orders of this Court and of the District Court for the Southern District of Mississippi; and that the acts and conduct of the defendants named in the petition will cause immediate and irreparable injury to the United States consisting of the impairment of the integrity of its judicial processes, the obstruction of the due administration of justice, and the deprivation of rights under the Constitution and laws of the United States, all before notice can be served and a hearing had,

IT IS ORDERED that the State of Mississippi, Ross R. Barnett, Joe T. Patterson, T. B. Birdsong, Paul G. Alexander, William R. Lamb, J. Robert Gilfoy, J. W. Ford, William D. Rayfield, James D. Jones, Walton Smith, the class consisting of all district attorneys in Mississippi, the class consisting of the sheriffs of all counties in Mississippi, the class consisting of all chiefs of police in Mississippi, and the class consisting of all constables and town marshals in Mississippi, their agents, employees, officers, successors, and all persons in active concert or participation with them, be temporarily restrained from:

1. Arresting, attempting to arrest, prosecuting or instituting any prosecution against James Howard Meredith under any statute, ordinance, rule or regulation whatever, on account of his attending, or seeking to attend, the University of Mississippi;

2. Instituting or proceeding further in any civil action against James Howard Meredith or any other persons on account of James Howard Meredith's enrolling or seeking to enroll, or attending the University of Mississippi;

3. Injuring, harassing, threatening or intimidating James Howard Meredith in any other way or by any other means on account of his attending or seeking to attend the University of Mississippi;

4. Interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment or rights under this Court's order of July 28, 1962 and the order of the United States District Court for the Southern District of Mississippi entered September 13, 1962, in this action, and

5. Interfering with or obstructing, by force, threat, arrest or otherwise, any officer or agent of the United States in the performance of duties in connection with the enforcement of, and the prevention of obstruction to, the orders entered by this Court and the District Court for the Southern District of Mississippi relating to the enrollment and attendance of James Howard Meredith at the University of Mississippi; or arresting, prosecuting or punishing such officer or agent on account of his performing or seeking to perform such duty.

IT IS FURTHER ORDERED that Paul G. Alexander and J. Robert Gilfoy be temporarily restrained from proceeding further, serving or enforcing any process or judgment, or arresting James Howard Meredith in connection with the criminal actions against him in the Justice of the Peace Court of Hinds County, Mississippi.

IT IS FURTHER ORDERED that A. L. Meador, Sr., be temporarily restrained from taking any further action

or seeking to enforce any judgment entered in the case of *A. L. Meador, Sr.* v. *James Meredith, et al.*

IT IS FURTHER ORDERED that Ross R. Barnett be temporarily restrained from enforcing or seeking to enforce against James Howard Meredith, any process or judgment in the case of *State of Mississippi, Ex Rel Ross Barnett, Governor* vs. *James H. Meredith.*

/s/ ELBERT P. TUTTLE
Circuit Judge
/s/ RICHARD T. RIVES
Circuit Judge
/s/ JOHN MINOR WISDOM
Circuit Judge

Signed this 25th day of
September, 1962, at 8:30 A.M.

ORDER

Upon the application of appellant which is appended hereto: It is hereby ordered and decreed that Ross R. Barnett, Governor of the State of Mississippi is added as party defendant in this cause in this court.

Service upon the Attorney General of Mississippi shall constitute service of all of the original parties-defendants.

Service upon the Governor and the Attorney General of Mississippi shall be made by the United States Marshal.

/s/ ELBERT P. TUTTLE
/s/ RICHARD T. RIVES
/s/ JOHN MINOR WISDOM
United States Circuit Judges

Signed September 25, 1962

TEMPORARY RESTRAINING ORDER

Upon the application of appellant herein, appended hereto, and made a part hereof, which specifies the irreparable injury to the appellant, Ross R. Barnett, Governor of the State of Mississippi, and J. R. Gilfoy, Sheriff of Hinds County, Mississippi are hereby restrained and enjoined from taking any actions or doing any act calculated to or which does interfere with the admission, registration, or attendance of appellant at the University of Mississippi.

1. Said Governor and Sheriff are hereby specifically enjoined from taking any action to enforce or serve the injunction obtained by the Governor on September 20, 1962 in the Chancery Court of Hinds County, Mississippi, First Judicial District, against registration and attendance of appellant at the University of Mississippi.

2. Said Governor and Sheriff are specifically enjoined from taking any action to enforce any other injunction obtained in the State Courts of Mississippi against appellant, his agents and attorneys, the University of Mississippi, or any of its officials, or employees, which has the effect of interfering with the registration, enrollment, or continued attendance of appellant at the University of Mississippi.

3. Said Governor and all other officials, agents, or employees of the State of Mississippi are specifically enjoined from making application for any future injunctions in the state courts of Mississippi, or any other courts, directed against the appellant, his agents and attorneys, or officials and employees of the University of Mississippi, which are designed to impede and obstruct the registration and attendance of appellant at the University of Mississippi.

4. Said Governor also is enjoined from ordering the state police of Mississippi or any state officials, or employees, or other persons, to arrest, obstruct, or otherwise interfere with the freedom of movement of appellant.

It is further Ordered that:

1. Governor Ross R. Barnett appear before this Court in the City of New Orleans, Old Post Office Building, on October 5, 1962, at 10 O'Clock, A.M. and show cause why he should not be made a party in this case and why a preliminary injunction should not issue.

2. This temporary restraining order shall apply to the Governor, his agents, attorneys and any other persons acting in concert and participation with him or who shall have actual notice of this order.

3. Service of this order shall be made upon the Governor and service of this order upon the Attorney General of the State of Mississippi shall constitute service upon the parties to this case and all other officials, employees, or agents of the State of Mississippi. A copy of this order shall also be served on Thomas Watkins, attorney for the Governor in the Hinds County injunction action of September 20, 1962 referred to herein. Service upon the Governor, the Attorney General and Thomas Watkins shall be made by the United States Marshal.

There is insufficient time to give notice and to have a hearing before the issuance of this order. Unless this order is issued without notice and hearing at this time, appellant will not be admitted to the University of Mis-

sissippi as directed by the orders of this Court resulting in further irreparable injury to him.

/s/ ELBERT P. TUTTLE
/s/ RICHARD T. RIVES
/s/ JOHN MINOR WISDOM
United States Circuit Judges

Signed 8:30 a.m.
September 25, 1962

ORDER REQUIRING ROSS R. BARNETT TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT

This Court having entered an order on July 28, 1962, and the District Court for the Southern District of Mississippi having entered an order pursuant to the mandate of this Court on September 13, 1962, requiring officials of the University of Mississippi and the members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi to register and admit James H. Meredith as a student in the University of Mississippi, and

This Court having, on September 24, 1962, instructed Robert B. Ellis, Registrar of the University of Mississippi, James Davis Williams, Chancellor of the University, Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University, and the defendant members of the Board of Trustees of Institutions of Higher Learning, what action they were required to take in order to comply with the order of this Court, and having particularly directed Robert B. Ellis to be available at Jackson, Mississippi at the office of the Board of Trustees of Institutions of Higher Learning from 1:00 p.m. to 6:00 p.m. on September 25, 1962 for the purpose of the regis-

tration of James H. Meredith and his actual admission to the University on the same basis as other students, and this Court having entered a temporary restraining order at 8:30 a.m. this day restraining Ross R. Barnett from interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi of September 13, 1962, and

It appearing from the verified application of the United States, *amicus curiae* herein, that on the afternoon of this day Ross R Barnett, having been served with a copy of the temporary restraining order referred to above and having actual knowledge of the terms of that order, deliberately prevented James H. Meredith from entering the office of the Board of Trustees in Jackson, Mississippi at a time when James H. Meredith was seeking to appear before Robert B. Ellis in order to register as a student in the University, and that by such conduct Ross R. Barnett did wilfully interfere with and obstruct James H. Meredith in the enjoyment of his rights under this Court's order of July 28, 1962 and did wilfully interfere with and obstruct Robert B. Ellis in the performance of his obligations under this Court's order of July 28, 1962, all in violation of the terms of the temporary restraining order entered by the Court this day,

IT IS ORDERED that Ross R. Barnett appear personally before this Court on September 28th, 1962 at 10 o'clock a.m. in the court room of the United States Court of Appeals for the Fifth Circuit, at 600 Camp Street, New Orleans, Louisiana, to show cause, if any he has,

why he should not be held in civil contempt of the temporary restraining order entered by the Court this day.

The Marshal is directed to serve a copy of this order upon Ross R. Barnett, forthwith.

Signed this September 25th, 1962, at 8:20 o'clock p.m.

/s/ RICHARD T. RIVES
Circuit Judge
/s/ JOHN MINOR WISDOM
Circuit Judge
/s/ WALTER P. GEWIN
Circuit Judge

ORDER

Appellant has moved this Court for an order directing Ross R. Barnett, Governor of Mississippi, to show cause why he should not be adjudged in contempt of orders issued by this Court in this action. On consideration of that motion, presented to this Court on the 26th day of September, it is now Ordered:

1. That Governor Ross R. Barnett be, and is, required to show cause, if he has any, before this Court in the City of New Orleans, Old Post Office Building, on the 28th day of September 1962 at 10 A.M., why he should not be adjudged in contempt of the orders issued by this Court.

2. Service of this order is to be made by United States Marshal.

/s/ ELBERT P. TUTTLE
United States Circuit Judge
/s/ JOHN R. BROWN
United States Circuit Judge
/s/ JOHN MINOR WISDOM
United States Circuit Judge

Signed September 26, 1962

ORDER REQUIRING PAUL B. JOHNSON, JR. TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT

This Court having entered an order on July 28, 1962, and the District Court for the Southern District of Mississippi having entered an order pursuant to the mandate of this Court on September 13, 1962, requiring officials of the University of Mississippi and the members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi to register and admit James H. Meredith as a student in the University of Mississippi, and

This Court having entered a temporary restraining order on September 25, 1962, restraining the State of Mississippi, Ross R. Barnett, their agents, employees, officers and successors, together with all persons in active concert and participation with them, from interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962 and the order of the United States District Court for the Southern District of Mississippi of September 13, 1962, and

It appearing from the verified application of the United States, *amicus curiae* herein, that Paul B. Johnson, Jr. is an officer and agent of the State of Mississippi; that on September 26, 1962, after receiving actual and constructive notice of the terms of this Court's temporary restraining order of September 25, 1962, and while acting in concert and active participation with Ross R. Barnett, he prevented James H. Meredith from entering the campus of the University of Mississippi in Oxford, Mississippi, and did thereby prevent James H. Meredith from enrolling in and attending the Univer-

sity, all for the purpose of interfering with and obstructing James H. Meredith in the enjoyment of rights, and preventing and obstructing the officials of the University and the Board of Trustees of Institutions of Higher Learning from performing obligations under this Court's order of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi of September 13, 1962,

IT IS ORDERED that Paul B. Johnson, Jr. appear personally before this Court on September 29, 1962, at 10 o'clock a.m. in the court room of the United States Court of Appeals for the Fifth Circuit at 600 Camp Street, New Orleans, Louisiana, to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining order issued by this Court on September 25, 1962.

The Marshal is directed to serve a copy of this order upon Paul B. Johnson, Jr. forthwith.

Signed this September 26, 1962, at 5 o'clock p.m.

/s/ RICHARD T. RIVES
Circuit Judge

/s/ JOHN R. BROWN
Circuit Judge

/s/ JOHN MINOR WISDOM
Circuit Judge

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT OF CIVIL CONTEMPT.

Before TUTTLE, Chief Judge, and HUTCHESON, RIVES, JONES, BROWN, WISDOM, GEWIN and BELL, Circuit Judges.

This Court having on September 25, 1962 issued orders requiring Ross R. Barnett to appear before this Court today at 10:00 A. M., to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining orders entered in this action on September 25, 1962, and Ross R. Barnett having been given notice of the orders to show cause, and it having been regularly called on the calendar for hearing at 10:00 A. M. this day, and Ross R. Barnett having failed to appear or respond in person or by counsel, and having failed to deny the factual statements contained in the verified application of the United States, and of the appellant and

The Court having heard and received evidence on behalf of the United States and of the appellant, and having deliberated and considered the legal issues involved, now renders its Findings of Fact and Conclusions of Law and Judgment as follows:

FINDINGS OF FACT

1. Since this Court entered its order of July 28, 1962, and the District Court for the Southern District of Mississippi entered its order on September 13, 1962, requiring the admission of James H. Meredith to the University of Mississippi, Ross R. Barnett, as Governor of the State of Mississippi, has issued a series of proclamations calling upon all officials of the state to prevent and obstruct the carrying out of the Court's orders with respect to the admission of James H. Meredith to the University. Two of these proclamations were issued by

Ross R. Barnett on September 24, and September 25, 1962.

2. On September 25, 1962, this Court entered its temporary restraining orders restraining Ross R. Barnett from interfering with or obstructing in any manner or by any means the enjoyment of rights or the performance of obligations under this Court's order of July 28, 1962 and the order of the District Court of September 13, 1962.

3. At approximately 4:30 P. M. on September 25, 1962, Ross R. Barnett, having full knowledge of the existence and terms of this Court's temporary restraining orders, went to the office of the Board of Trustees of Institutions of Higher Learning in Jackson, Mississippi at a time when James H. Meredith was due to appear at the office and be enrolled as a student in the University of Mississippi, pursuant to the order of this Court. When James H. Meredith arrived at the office and sought to enter for the purpose of enrolling, Ross R. Barnett deliberately prevented him from entering and told him that his application for enrollment was denied by Ross R. Barnett.

4. On September 26, 1962, James H. Meredith sought to enter the campus of the University of Mississippi in Oxford, Mississippi. He was prevented from entering by Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, acting pursuant to the instructions and under the authorization of Ross R. Barnett.

5. The conduct of Ross R. Barnett in preventing James H. Meredith from enrolling as a student in the University of Mississippi has been with the deliberate and announced purpose of preventing compliance with the orders of this and other federal courts.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the person of Ross R. Barnett.

2. Ross R. Barnett is in contempt of the temporary restraining orders entered by this Court on September 25, 1962.

JUDGMENT OF CIVIL CONTEMPT

Upon the foregoing findings of fact and conclusions of law:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

Ross R. Barnett is in civil contempt of the temporary restraining orders of this Court entered September 25, 1962; that such contempt is continuing; and that Ross R. Barnett shall be committed to and remain in the custody of the Attorney General of the United States and shall pay a fine to the United States of $10,000. per day unless on or before Tuesday, October 2nd, 1962 at 11:00 a. m. he shows to this Court that he is fully complying with the terms of the restraining orders, and that he has notified all law enforcement officers and all other officers under his jurisdiction or command:

(a) To cease forthwith all resistance to and interference with the orders of this Court and the District Court for the Southern District of Mississippi;

(b) To maintain law and order at and around the University and to cooperate with the officers and agents of this Court and of the United States in the execution of the orders of this Court and of the District Court for the Southern District of Mississippi to the end that James H. Meredith be permitted to regis-

ter and remain as a student at the University of Mississippi under the same conditions as apply to all other students.

Nothing herein shall prevent a later assertion of a charge of criminal contempt against Respondent.

Jurisdiction is hereby reserved for such other and further orders as may be appropriate.

Judges Jones, Gewin and Bell dissent from that portion of the judgment imposing a fine upon the Respondent.

Signed September 28, 1962

FINDING OF FACT, CONCLUSIONS OF LAW AND JUDGMENT OF CIVIL CONTEMPT AGAINST PAUL B. JOHNSON, JR.

Before RIVES, BROWN and WISDOM, Circuit Judges.

This Court having entered an order on September 26, 1962, requiring Paul B. Johnson, Jr. to appear before this Court today at 10:00 A. M. to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining order entered in this action upon application of the United States on September 25, 1962, and Paul B. Johnson, Jr., having been given notice of the order to show cause and it having been regularly called on the calendar for hearing at 10:00 A. M. this day, and Paul B. Johnson, Jr. having failed to appear or respond, in person or by counsel, and having failed to deny the factual statements contained in the verified application of the United States, and

The Court having heard and received evidence on behalf of the United States and having deliberated and considered the legal issues involved, now renders its

findings of fact, conclusions of law and judgment as follows:

FINDINGS OF FACT

1. On September 25, 1962 this Court entered its temporary restraining order upon application of the United States, amicus curiae herein, restraining the State of Mississippi, Ross R. Barnett, their agents, employees, officers and successors, together with all persons in active concert or participation with them, from interfering with or obstructing in any manner or by any means the enjoyment of rights or the performance of obligations under this Court's order of July 28, 1962 and the order of the District Court of September 13, 1962.

2. The temporary restraining order of September 25, 1962 was served upon the State of Mississippi through its designated agent Joe T. Patterson, the Attorney General of the State of Mississippi, on September 25, 1962 and was served on Ross R. Barnett on September 25, 1962.

3. On September 26, 1962, Paul B. Johnson, Jr., acting as an officer and agent of the State of Mississippi and as an agent of and in active concert and participation with Ross R. Barnett, prevented James H. Meredith from entering the campus of the University of Mississippi at Oxford, Mississippi at a time when James H. Meredith was seeking to so enter for the purpose of enrolling as a student in the University pursuant to the orders of this Court of July 28, 1962 and the order of the District Court of September 13, 1962.

The conduct of Paul B. Johnson, Jr., in preventing James H. Meredith from entering the campus of the University of Mississippi and from enrolling as a stu-

dent in the University was with the deliberate and announced purpose of preventing compliance with the orders of this and other federal courts.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the person of Paul B. Johnson, Jr.

2. Paul B. Johnson, Jr. is in contempt of the temporary restraining order of September 25, 1962.

JUDGMENT OF CIVIL CONTEMPT

Upon the foregoing findings of fact and conclusions of law,

IT IS ORDERED, ADJUDGED AND DECREED that:

Paul B. Johnson, Jr. is in civil contempt of the temporary restraining order of this Court entered on September 25, 1962 upon application of the United States, *amicus curiae;* that such contempt is continuing, and that Paul B. Johnson, Jr. shall pay a fine to the United States of $5,000.00 per day, unless on or before October 2, 1962 at 11:00 a. m. he shows to this Court that from and after the time of the issuance of this order he has been, and is, in full compliance with the terms of the restraining order, that he intends to do so in the future and that he will, during any periods of time that he is acting for or on behalf of, or in the name, place or stead of, or with the authority or power of, or as Governor of the State of Mississippi, notify all law enforcement officers and all other officers under his jurisdiction or command:

(a) To cease forthwith all resistance to and interference with the orders of this Court and the District Court for the Southern District of Mississippi;

(b) To maintain law and order at and around the University and to cooperate with the officers and agents of this Court and of the United States in the execution of the orders of this Court and of the District Court for the Southern District of Mississippi to the end that James H. Meredith shall be permitted to register and remain as a student at the University of Mississippi under the same conditions as apply to all other students.

In the event that Paul B. Johnson, Jr. while acting for, or on behalf of, or in the name, place or stead of, or with the authority or power of, or as Governor of the State of Mississippi fails at any time to take the steps set forth in sub-paragraphs (a) and (b) he shall, on a finding of such fact by the Court, be committed to the custody of the Attorney General and shall pay a fine to the United States of $10,000 per day, such daily fine and imprisonment to continue during such period as he fails to purge himself of such contempt.

Nothing herein shall prevent a later assertion of a charge of criminal contempt against Respondent.

Jurisdiction is hereby reserved for such other and further orders as may be appropriate.

September 29, 1962

/s/ RICHARD T. RIVES

/s/ JOHN R. BROWN

/s/ JOHN MINOR WISDOM
Circuit Judges

ORDER

Before TUTTLE, Chief Judge, HUTCHESON, RIVES, JONES, BROWN, WISDOM, GEWIN, and BELL, Circuit Judges, en banc.

BY THE COURT:

From the testimony heard on the 24th day of September, 1962, and from the reports of this Court made pursuant to its order of that date, it appears to the satisfaction of the Court:

1. That John Davis Williams, Chancellor, Arthur Beverly Lewis, Dean of the College of Liberal Arts, Robert Byron Ellis, Registrar of the University and E. R. Jobe, Executive Secretary of the Board of Trustees of Higher Learning have at no time been, and are not in civil contempt of any judgment or order of this Court.

2. That on September 24th, 1962, the President and all members of the Board of Trustees of Higher Learning, including board member Tally D. Riddell, Esq., through his counsel, announced in open Court that they would thereafter perform all things ordered and directed by — and would comply with this Court's orders, and that each of them has since said date acted in compliance with this Court's orders.

It is now, therefore, Ordered and Adjudged:

A. That John Davis Williams, Chancellor, Arthur Beverly Lewis, Dean of the College of Liberal Arts, Robert Byron Ellis, Registrar of the University, and E. R. Jobe, Executive Secretary of the Board of Trustees of Higher Learning, have not been and are not guilty of civil contempt of this Court.

B. That the Court does not enter a judgment of civil contempt insofar as the President or any of the members

of the Board of Trustees of Higher Learning, are concerned and does vacate and dismiss the citation for civil contempt as to the President and each of the members of the Board of Trustees of Higher Learning.
Signed October 2, 1962

ORDER

Before TUTTLE, Chief Judge, HUTCHESON, RIVES, JONES, BROWN, WISDOM, GEWIN, and BELL, Circuit Judges, en banc.

BY THE COURT:

The matter of the entry of further orders as to civil contempt insofar as concerns Governor Ross R. Barnett or Lieutenant Governor Paul B. Johnson, Jr., the motion for preliminary injunction and all other motions or matters in this cause are set for hearing in the courtroom at New Orleans, Louisiana at 11:00 o'clock A.M. on Friday, October 12, 1962.

The restraining order heretofore issued by this Court shall remain in full force and effect until such time.
Signed October 2, 1962

ORDER AND JUDGMENT ON THE MOTION OF THE STATE OF MISSISSIPPI TO DISSOLVE THE TEMPORARY RESTRAINING ORDER OF SEPTEMBER 25, 1962, TO DISMISS THE CONTEMPT PROCEEDINGS AGAINST ROSS R. BARNETT and PAUL B. JOHNSON, JR., and ORDER AND JUDGMENT ON MOTION OF APPELLANT and UNITED STATES OF AMERICA, AMICUS CURIAE, PETITIONER, FOR PRELIMINARY INJUNCTION.

This matter came on for hearing on October 12, 1962, pursuant to an order to show cause why a preliminary injunction should not be granted against the named

Respondents, and on a motion subsequently filed by the State of Mississippi to dissolve the temporary restraining order entered by this Court on September 25, 1962, and to dismiss the pending contempt proceedings which had resulted in a judgment of this Court finding respondent, Ross R. Barnett, guilty of civil contempt. The United States, Amicus Curiae, by designation of the Court, as petitioner herein, named all of the respondents whose names are included in the caption of this order. The appellant named some but not all of the said respondents but did not name the State of Mississippi as a party.

Petitioners introduced oral testimony and documentary evidence which fully sustained the allegations of the petition. Respondents all appeared by counsel. Neither the State of Mississippi nor any other respondent made any factual showing in an effort to contradict the allegations of fact or the testimony tendered on behalf of petitioners supporting said allegations. The respondents contend that these petitions for injunction, as well as the petitions for temporary restraining order against the parties herein named undertook to make additional parties in an equity cause on appeal. As to which none of said parties had had an opportunity to contest the judgment of the trial court or the judgment of this Court which resulted in the injunction of July 28, 1962. Those judgments required the defendants in the original complaint, the administrative officials and the Board of Trustees of the University of Mississippi to admit James H. Meredith as a student and to permit his continued attendance as a student on the same basis as all other students.

The posture of this case at the time these motions for preliminary injunction and the accompanying motions

for temporary restraining order were filed, is that this Court had issued its injunction, above referred to, prohibiting the officials of the University and the Trustees of the State Institutions of Higher Learning of the State of Mississippi from interfering with the admission of James H. Meredith and his continuance as a student in the University of Mississippi, and also prohibiting certain of the defendants now before the Court from further prosecuting criminal proceedings against the said Meredith; whereupon, it was alleged in the petition of the United States, the State of Mississippi, through its official state policy, pursuant to actions of its Legislature, and through the actions of its Governor by proclamation, and all of the other respondents, were then engaged in actively frustrating the execution of this Court's injunction against the officials of the University. These proceedings, therefore, are purely ancillary to the original lawsuit, and this Court has ample power to proceed against any party, including the State of Mississippi, which is shown to be engaged in a wilful, intentional effort to frustrate this Court's injunction.

The motion to dissolve the restraining order and the motion to dismiss the contempt proceedings by the Respondents are, therefore, DENIED.

The ruling just stated equally disposes of the contention made by the respondents that this Court is now powerless to issue the preliminary injunction. We, therefore, hold that the Court has the power to issue this injunction against the persons not previously named as defendants in the main suit to prevent their active interference with this Court's prior injunctions.

The evidence adduced before this Court, neither attacked by respondents nor contended by them to be

legally insufficient to warrant the granting of the relief sought, establishes the following facts:

The State of Mississippi, Ross R. Barnett, Governor of Mississippi, Joe T. Patterson, Attorney General of Mississippi, T. B. Birdsong, Commissioner of Public Safety of Mississippi, Paul G. Alexander, District Attorney of Hinds County, William R. Lamb, District Attorney of Lafayette County, J. Robert Gilfoy, Sheriff of Hinds County, J. W. Ford, Sheriff of Lafayette County, William D. Rayfield, Chief of Police of the City of Jackson, James D. Jones, Chief of Police of the City of Oxford, Walton Smith, Constable of the City of Oxford, threaten to implement and enforce, unless restrained by order of this Court, the provisions of a Resolution of Interposition adopted by the Mississippi Legislature, the provisions of Section 4065.3 of the Mississippi Code, and a Proclamation of Ross R. Barnett invoking the doctrine of interposition with respect to the enforcement of the orders of this Court in this case; that Paul G. Alexander has instituted two criminal prosecutions against James Howard Meredith on account of the efforts of James Howard Meredith to enroll in the University of Mississippi pursuant to the orders of this Court. On September 28, 1962, James H. Meredith was tried in absentia by the Justice of the Peace of Hinds County, Mississippi, and convicted on the charge by Paul Alexander that Meredith had falsely secured registration as a voter of Hinds County, when he was in fact a resident of Attala County, and for which he was assessed a penalty of imprisonment for one year and a fine of $300. On September 20, 1962 James Howard Meredith, while seeking to enroll at the University of Mississippi in Oxford, Mississippi, pursuant to the orders of this Court, was served with a writ of injunction issued

by the Chancery Court of Lafayette County, Mississippi, at the instance of Ross R. Barnett, enjoining James Howard Meredith from applying to or attending the University of Mississippi, and to which Meredith and his attorneys are required to show cause on the 4th day of November, 1962, why this injunction should not be made permanent. On September 20, 1962, Ross R. Barnett, the Governor of the State of Mississippi secured an injunction in the Chancery Court of Hinds County against Meredith and his attorneys enjoining them from proceeding to secure the registration, admission and continued attendance of Meredith as a student at the University of Mississippi to which Meredith has been ordered to show cause on the fourth Monday in October, 1962, why the injunction should not continue. Likewise September 20, 1962, on application of Ross R. Barnett, Governor of the State of Mississippi, the Chancery Court of Hinds County issued an injunction against the Board of Trustees of the State Institutions of Higher Learning enjoining it from admitting Meredith to the University of Mississippi. On September 20, 1962, the State of Mississippi enacted Senate Bill 1501, the effect of which is to punish James Howard Meredith should he seek enrollment in the University of Mississippi; that on October 3 and 5, 1962, respectively, the House and Senate of the Mississippi Legislature adopted House Concurrent Resolution No. 18, calling for the redress of grievances, including the removal of Meredith from the University, removal of all Federal Marshals and troops; that on September 28, 1962, House Bill #2, Laws of Mississippi, 1962, Extraordinary Session, was enacted, providing that all acts, words and conduct performed by any state officer in keeping Mississippi Institutions of Higher Learning segregated are adopted as the Acts

of the sovereign state of Mississippi and not the acts of such individuals; that the effect of the conduct of the defendants herein named in implementing the policy of the State of Mississippi as proclaimed by Ross R. Barnett will necessarily be to prevent the carrying out of the orders of this Court and of the District Court for the Southern District of Mississippi; and that the acts and conduct of the defendants named in the petition will cause immediate and irreparable injury to the appellant Meredith and to the United States consisting of the impairment of the integrity of its judicial processes, the obstruction of the due administration of justice, and the deprivation of rights under the Constitution and laws of the United States unless prevented by an order of the Court,

IT IS NOW THEREFORE ORDERED that the State of Mississippi, Ross R. Barnett, Joe T. Patterson, T. B. Birdsong, Paul G. Alexander, William R. Lamb, J. Robert Gilfoy, J. W. Ford, William D. Rayfield, James D. Jones, Walton Smith, their agents, employees, officers, successors, and all persons in active concert or participation with them who shall receive actual notice of this injunction by personal service or otherwise, be enjoined until the further order of this Court from:

1. Arresting, attempting to arrest, prosecuting or instituting any prosecution against James Howard Meredith under any statute, ordinance, rule or regulation whatever, on account of his attending, or seeking to attend, the University of Mississippi; without limiting the generality of the foregoing, this shall include:

(a) Proceeding to arrest the appellant pursuant to the conviction of appellant on September 20, 1962, in the case of State of Mississippi v. Meredith, Case No.

15-242, filed May 28, 1962, in the Justice of the Peace Court, Fifth Supervisors District of Hinds County, Mississippi, and from taking any action to enforce the judgment of conviction against the appellant in this case.

(b) Proceeding with the prosecution of appellant in State of Mississippi v. Meredith, Case No. 16-307, filed September 14, 1962, charging appellant with a felony and alleging that he falsely secured his registration as a voter in Hinds County.

(c) Commencing any other prosecutions or taking any action or doing any act to further prosecute the appellant for allegedly securing his registration as a voter in Hinds County.

2. Instituting or proceeding further in any civil action against James Howard Meredith or any other persons on account of James Howard Meredith's enrolling or seeking to enroll or attending the University of Mississippi; without limiting the generality of the foregoing this includes:

(a) Taking any action or doing any act to enforce or serve the injunction order obtained on the 20th day of September, 1962, in the Chancery Court of Hinds County, Mississippi, by the Governor of the State of Mississippi, Ross R. Barnett, against the appellant and his attorneys in the case of State of Mississippi, ex rel, Ross Barnett v. Meredith, Complaint No. 62,000 filed September 20, 1962.

(b) Taking any action or doing any act to enforce or serve the injunction order obtained by the Governor of the State of Mississippi in the Chancery Court of Lafayette County, Mississippi, against the appellant and his attorneys in the case of State of Mississippi,

ex rel. Ross R. Barnett v. Meredith, Complaint No. A-654, filed September 20, 1962.

(c) Taking any action or doing any act to serve or enforce the injunction issued against the appellee Board of Trustees of State Institutions of Higher Learning by the Chancery Court of Hinds County on September 20, 1962, upon the application of Ross R. Barnett, Governor of the State of Mississippi.

(d) Taking any action or doing any act to secure any further or additional state court injunctions against the appellant, his attorneys, the Board of Trustees of State Institutions of Higher Learning, or any official of the University of Mississippi which are designed to or which have the effect of interfering with the continued attendance of appellant as a student at the University of Mississippi.

3. Injuring, harassing, threatening or intimidating James Howard Meredith in any other way or by any other means on account of his attending or seeking to attend the University of Mississippi;

4. Interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi entered September 13, 1962, in this action, and

5. Interfering with or obstructing, by force, threat, arrest or otherwise, any officer or agent of the United States in the performance of duties in connection with the enforcement of, and the prevention of obstruction to, the orders entered by this Court and the District Court for the Southern District of Mississippi relating

to the enrollment and attendance of James Howard Meredith at the University of Mississippi; or arresting, prosecuting or punishing such officer or agent on account of his performing or seeking to perform such duty.

DATED: October 19th, 1962.

/s/ ELBERT P. TUTTLE
Chief Judge, United States Court of Appeals, Fifth Circuit

/s/ RICHARD T. RIVES
United States Circuit Judge

/s/ WARREN L. JONES
United States Circuit Judge

/s/ JOHN R. BROWN
United States Circuit Judge

/s/ JOHN MINOR WISDOM
United States Circuit Judge

CIRCUIT JUDGES GEWIN and BELL concurring in part and dissenting in part:

With all deference to our brothers, and realizing that it involves for each of us a matter of judgment, we would make our injunction the mandate of this court and forward it to the United States District Court for the Southern District of Mississippi, there to be made the judgment of that court, and to be supervised and enforced along with our injunction of July 28, 1962 which was entered by that court on September 13, 1962 pursuant to our mandate. Our appellate jurisdiction would continue but the remand should tend to restore normalcy in Mississippi, and would comport with good judicial administration under the circumstances.

Of course, we should retain the contempt proceedings now pending against Governor Barnett and Lieutenant Governor Johnson for final disposition but such retention in no way militates against remand. The Governor and Lieutenant Governor must yield in order to purge themselves of contempt. They must yield also to preserve the integrity of the judicial process, the Federal Constitution and their oaths of office pursuant thereto:

> "... and all executive Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution; ..." Article 6, Clause 3.

Upon their yielding, the enforcement of all other outstanding orders in this matter would and should be the duty of the District Court.

We have serious doubts, from a procedural and substantive point of view, as to the joinder of the State of Mississippi as a party. We would dissolve the temporary restraining order as to the State of Mississippi and would not include the State of Mississippi in the preliminary injunction. U. S. Const. Art. III, §2, par. 2 and the 11th Amendment.

We concur in the order of the majority save in this respect.

/s/ WALTER P. GEWIN
United States Circuit Judge

/s/ GRIFFIN B. BELL
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

JAMES HOWARD MEREDITH, On Behalf of Himself And Others Similarly Situated

V. No. 3130

CHARLES DICKSON FAIR, President of the Board of Trustees of the State Institutions of Higher Learning, ET AL

ORDER GRANTING PERMANENT INJUNCTION

This matter is now before this Court by virtue of the Mandate of the United States Court of Appeals for the Fifth Circuit and the Mandate of Mr. Justice Black of September 10, 1962 setting aside all stays granted by Judge Ben F. Cameron and putting into effect the mandates of the Court of Appeals for the Fifth Circuit enjoining the Trustees and officials of the University of Mississippi from taking any steps to prevent enforcement of the mandates of the Court of Appeals for the Fifth Circuit, and this Court having now considered the mandates of the Court of Appeals for the Fifth Circuit of July 17, 1962, July 27, 1962 and its final order of August 4, 1962, and this Court having considered the mandate of July 17, 1962 wherein the Court of Appeals reversed the judgment of the District Court with directions to this Court to issue an injunction as prayed for in the complaint and by its mandate of July 27, 1962 ordered that the judgment of that Court issued as and for the mandate on July 17, 1962, be recalled and amended by making explicit the meaning that was implicit as expressed in its opinion dated June 25, 1962 and ordering that this Court "forthwith grant all relief prayed

for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi."

And by its mandate of August 4, 1962 the Court of Appeals reaffirmed its orders of July 17, 1962 and July 27, 1962 in the following language: "All of our orders of July 17, July 27 and this date, therefore continue in full force and effect and require full and immediate obedience and compliance."

Now, therefore, it is here ordered, adjudged and decreed that the plaintiff, James Howard Meredith, be and he is hereby granted all the relief that is prayed for by him in his complaint and that the defendants, Charles Dickson Fair, President of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Louisville, Mississippi; Euclid Ray Jobe, Executive Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Jackson, Mississippi; Edgar Ray Izard, Hazlehurst, Mississippi; Leon Lowrey, Olive Branch, Mississippi; Ira Lamar Morgan, Oxford, Mississippi; Malcolm Mette Roberts, Hattiesburg, Mississippi; William Orlando Stone, Jackson, Mississippi; S. R. Evans, Green-

wood, Mississippi; Verner Smith Holmes, McComb, Mississippi; James Napoleon Lipscomb, Macon, Mississippi; Tally D. Riddell, Quitman, Mississippi; Harry Gordon Carpenter, Rolling Fork, Mississippi; Robert Bruce Smith, II, Ripley, Mississippi and Thomas Jefferson Tubb, West Point, Mississippi, Members of the Board of Trustees of State Institutions of Higher Learning; James Davis Williams, Chancellor of the University of Mississippi, Oxford, Mississippi; Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, Oxford, Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, Oxford, Mississippi, and each of them, their agents, servants, employees, successors, attorneys and all persons in active concert and participation with them be and they hereby are permanently restrained and enjoined from:

(1) Refusing to admit plaintiff, James Howard Meredith immediately to the University of Mississippi and that they shall each of them be, and they are hereby required to admit him to the University of Mississippi upon the same terms and conditions as applicable to white students;

(2) From interfering in any manner with the right of plaintiff, James Howard Meredith to matriculate in, or attend the University of Mississippi;

(3) From taking any action or doing any act or being guilty of any conduct which will impair, frustrate or defeat his right to enter the University of Mississippi;

(4) Refusing to admit the plaintiff, James Howard Meredith to the University of Mississippi upon his applications heretofore filed, all of which are continuing applications.

It is further ordered that said defendants, or any of the classes of persons referred to, are prohibited and enjoined from excluding the said James Howard Meredith from admission to continued attendance at the University of Mississippi.

It is further ordered that the defendants, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, are enjoined to admit the plaintiff, James Howard Meredith to the University of Mississippi upon his applications heretofore filed and they are enjoined from excluding the said James Howard Meredith from admission to continued attendance at the University of Mississippi or discriminating against him in any way whatsoever because of his race.

It is further ordered that a copy of this order and injunction be served by the United States Marshal on each of the defendants herein.

ORDERED, this the 13th day of September, 1962.

/s S. C. MIZE
United States District Judge

EXCERPT OF MINUTES OF BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING

September 25, 1962

Authority Given Governor Barnett

"M. M. Roberts moved that the Board invest Honorable Ross R. Barnett, the Governor of the State of Mississippi, with the full power, authority, right and discretion of this Board to act upon all matters pertaining to or concerned with the registration or non-registration,

admission or non-admission and/or attendance or non-attendance of James H. Meredith at the University of Mississippi and that a certified copy of this Resolution together with copies of the conflicting injunctions of Honorable S. C. Mize dated September 13, 1962 and Chancellor L. B. Porter dated September 19, 1962 previously served upon the members of this Board, be furnished to the Governor in his capacity as the Chief Executive Officer of this State, the representative of this Board, and the repository of its full rights, power, authority and discretion for such course of action as the Governor shall deem legal, fit and proper in the premises.

This motion was seconded by Leon Lowrey.

A motion was offered to substitute some person other than the Governor in the foregoing motion. This motion was defeated.

A discussion was held as to the voting. A motion was made that a secret vote be taken. A substitute motion called for the preparation of separate ballots for voting. This was accepted and the motion was carried.

It was announced that Mr. E. Ray Izard was absent attending the funeral of his sister, and that Mr. Tally D. Riddell was absent being confined in the University Hospital.

Upon vote which was taken by secret ballot, the results were as follows:

9 yes
1 nay
1 abstention

Thereupon the Chairman of the Board declared the motion carried."